





# COLLECTIVE SECURITY







LEAGUE OF NATIONS  
INTERNATIONAL STUDIES CONFERENCE

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# COLLECTIVE SECURITY

*A record of the  
Seventh and Eighth International Studies Conferences*

Paris 1934 — London 1935

*edited by*

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## NOTE

The present volume has been prepared by the International Institute of Intellectual Co-operation, under the direction of an Editorial Board appointed by the International Studies Conference during its Eighth Session, held at London June 3 to 7, 1935, and composed of :

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## PREFACE

The International Studies Conference has carried out, during the past two years, a study of the problem of Collective Security. This volume is a record of the Conference's work.

It is perhaps desirable to recall, very briefly, the origins, organization and activity of the Conference.

In 1928, a meeting was held in Berlin, under the auspices of the International Institute of Intellectual Co-operation, to enquire into the possibility of bringing about a coordination on an international scale of the institutions in the different countries devoted to the scientific study of International Relations. Representatives of national institutions in Austria, France, Germany, Great Britain, Italy, and the United States, and of four international institutions were present at this meeting. They outlined a scheme of practical collaboration, to be put into operation with the assistance of National Co-ordinating Committees and of the International Institute of Intellectual Co-operation, and they decided that another meeting should be convened the following year. Thus came into being the International Studies Conference.

Membership of the Conference is confined to scientific institutions working in a spirit of objective and disinterested research. No institution, whether official or private, engaging in political propaganda or in direct political action, is admitted to membership.

The Conference has met annually since 1928, in London in 1929, Paris in 1930, Copenhagen in 1931, Milan in 1932, London in 1933, Paris in 1934 and London in 1935, its permanent Secretariat being provided by the International Institute of Intellectual Co-operation. It now groups together the national institutions in fifteen countries as well as five international institutions,<sup>1</sup> while negotiations are at present under way for the participation in the near future of representatives of institutions belonging to a number of other countries.<sup>2</sup>

During its first years of activity, the Conference, seconded by an Executive Committee, devoted itself to the essential task of co-ordination. Interchanges of speakers and professors, exchanges of information, publications, programmes of study, bibliographies, etc., and the preparation by the Institute of various handbooks of information, such were the chief manifestations of this collaboration.

To these practical activities the Conference has in recent years added the function of co-operative research and discussion. This work is conducted on principles of complete impartiality: no attempt is made

<sup>1</sup> Australia, Austria, Canada, Czechoslovakia, Denmark, France, Great Britain, Italy, Netherlands, New Zealand, Poland, Rumania, South Africa, Spain, United States, Academy of International Law, The Hague, European Centre of the Carnegie Endowment for International Peace, Paris, Geneva School of International Studies, Graduate Institute of International Studies, Geneva, Institute of Pacific Relations, Honolulu.

<sup>2</sup> Notably in China, Hungary, Japan, Norway, Sweden, Switzerland and U. S. S. R.



to arrive at unanimous decisions no notes or resolutions are taken. The participants are engaged in scientific research for its own sake, and their reports and statements constitute purely personal expressions of opinion.

The annual session of the Conference represents only one aspect of the work of its Members. It is always preceded by a long period of preparation by individual scholars and study groups in each country.<sup>1</sup> An account of the preparatory work on Collective Security will be found in the Introductory Report by the Conference's General Rapporteur Professor Bourquin.

The Eighth International Studies Conference — and General Study Conference on Collective Security — was held in London at the invitation of the British Co-ordinating Committee for International Studies.

The Conference was opened on June 3, 1933, at the London School of Economics and Political Science by Lord Meston, the President of the Conference.

Addresses were delivered by Sir Austen Chamberlain, by Professor Louis Eisenmann, Chairman of the Executive Committee of the Conference, and by Mr. Allen W. Dulles, who acted as Chairman of the Conference's Study Meetings. Professor Bourquin also presented an oral summary of his Report on the preparatory work which had been submitted by the Members of the Conference.

In the course of six study meetings held from June 4 to June 7 at the Royal Institute of International Affairs the chief aspects of the problem of Collective Security were discussed. In a final report presented at the closing meeting on June 7 Professor Bourquin outlined the principal trends of opinions which had been expressed in the discussion.

The closing addresses were delivered by Lord Meston, by Mr. Allen W. Dulles, and by Professor Gilbert Murray, President of the International Committee on Intellectual Co-operation.

It would certainly have been desirable to publish in full the memoranda and the discussions of the Conference, but the abundance of the material was too great to make such a plan practicable, and it was decided that only extracts from the documents should be included in the present publication. The task of choosing the extracts and of presenting them to the reader in proper order was entrusted by the Conference to a Committee of three members: the General Rapporteur Professor René Cassin and Professor Arnold J. Toynbee.

A task of this sort is not free from difficulties. The Committee has frequently been obliged to sacrifice for reasons of space passages which it would have wished to preserve. If the results of its work fall short



of its aims, the Committee is at least conscious of having performed its task with all possible objectivity

The plan adopted by the Committee closely follows the agenda which was decided upon by a preliminary Study Conference held in Paris in May 1934, and which formed the basis on which the whole work of the Conference was carried out. The material has been divided into a certain number of chapters corresponding with the different heads of the agenda, and under each subject have been brought together the relevant extracts from the Memoranda, and from the discussion <sup>1</sup>

<sup>1</sup> The theme chosen for the work of the next two sessions of the Conference (1936 and 1937) is *Peaceful Change*

(Peaceful Solution of certain international problems)

The basic difficulties in and the procedures for the peaceful solution of economic, territorial and social problems, with special reference to questions of (a) population, migration and colonisation and (b) markets and the distribution of raw materials







PART I

REPORT ON THE PREPARATORY MEMORANDA  
AND  
ADDRESSES DELIVERED AT THE  
INAUGURAL MEETING







GENERAL REPORT ON THE PREPARATORY MEMORANDA  
SUBMITTED TO THE GENERAL STUDY CONFERENCE IN 1935

by MAURICE BOURQUIN (*translation*)

It is, perhaps, desirable to recall briefly, at the beginning of this report, the history of the undertaking of which the London Conference will be the culmination

It was in the course of its sixth session (May-June, 1933), that the *International Studies Conference* chose the subject with which we are dealing. The Conference had been engaged during the two previous years, in studying an economic problem<sup>1</sup>. It seemed desirable to enter a different field and to take up one of the most important political concepts of international life. Collective Security.

When I had the honour, in November 1935, to be appointed General Rapporteur for this question, the work had already been begun. In July, the Director of the International Institute of Intellectual Co-operation had sent to the Members of the Conference a note pointing out certain aspects of the problem to which, it seemed to him, attention might profitably be directed. This note, together with the replies which it called forth, made it possible for me to draw up the Memorandum of November, 1933, in which I undertook to suggest a framework and a method for our future activities. Several groups replied promptly to my appeal, expressing their opinions regarding the project submitted to them, and, taking into consideration the documentation thus gathered, the Executive Committee, meeting at Paris on January 26, 1934, was able to reach certain decisions destined to map out our procedure. It was decided on the one hand that the limited Conference contemplated for the year 1934 should have as its task to undertake a preliminary examination of the subject as a whole and to fix the agenda of the Plenary Conference of 1935. It was decided on the other hand that the programme proposed in the Memorandum of November 1933 should be taken as the basis of discussion, subject to certain modifications in the direction of greater flexibility and with certain additions.

The route thus charted; the Members of the Conference were in a position to carry on their work more actively, and when the Preliminary Conference opened at the Sorbonne, May 24, 1934, with the Rector, M. Charléty, presiding, it was provided with a series of notes and memoranda constituting a documentation, still very incomplete, no doubt, but sufficient, nevertheless, to permit the Conference to distinguish the principal tendencies which would have to be taken into consideration.

From the 24th to the 26th of May, five study meetings, presided over

<sup>1</sup> "The State and Economic Life," International Institute of Intellectual Co-operation, Paris, 1934.



by M. Limburg Conseiller d'Etat,<sup>1</sup> led to interesting discussions and ended in the adoption of a programme, both simple and flexible, destined to direct the work remaining to be done and to fix the agenda of the Plenary Conference.

This agenda, having been drawn up in very general terms, was to be accompanied by a commentary defining its purport in the light of the discussion. Such was the object of the Report, prepared last June, which explains the different heads of the programme and indicates for each of them by way of example certain questions which, without being formally stated, are nevertheless implicit in the programme.

Since then, the Members of the Conference have carried on their work under conditions which, it seems to me, we may well consider satisfactory. If the work has not progressed everywhere at the same rate if there are certain gaps in the documentation which we have received, what we possess constitutes an imposing total. The number of memoranda before our eyes at the present moment would suffice to establish the magnitude of the task accomplished. But we may congratulate ourselves not only on their abundance, but especially on their quality on the interest which they present on the effort toward understanding of which they bear the mark. On all the important aspects of the problem, searching and sometimes remarkable studies have been presented to us. Moreover the great currents of public opinion, the principal tendencies which it is indispensable to grasp in order to reach a practicable solution, are distinctly manifested by the documents placed at our disposal. Whatever may be the results of the deliberations of London it can already be claimed that our collaboration has been fruitful.

It is impossible to analyse in detail all the memoranda which have been presented to us. The essential task is to facilitate the discussion which is to take place by grouping systematically the principal view points represented. The order in which this grouping can most profitably be carried out is indicated by our agenda. I shall therefore follow step by step the programme decided upon by the preliminary Conference and annotated in the Report of June 1934 in my attempt to trace the general tableau which we need.



milestones which mark the history of this problem since the end of the World War.

Several groups have acceded to this wish, and the very thorough studies which some of them have sent us deserve particular attention

We are indebted to the American Group for a remarkable study by Professeur Jessup (*International Security*),<sup>1</sup> which characterises, with luminous precision, the attitude of the Government and the opinion of his country, it indicates the lessons which are to be drawn from that attitude, the nature and the forms which the contribution of the United States to the work of collective security might take, and also the limits beyond which it would be vain to hope to extend the participation of that country

The general tendencies and the various shades of British opinion are described in Memorandum No 2 of the British Group (*British Opinion on Collective Security*)<sup>2</sup>, and, following a different method, in its Memorandum No 3 (*Some British Views on Collective Security*)<sup>3</sup> Memorandum No 2 takes the form of a synthetic exposition. Memorandum No 3 contains a series of individual monographs, confided, as Lord Meston points out in his Introduction, to personalities of sufficiently varied tendencies to reflect the enlightened opinion of the country

The French Group, in turn, offers us, in *French Opinion and the Problem of Collective Security*,<sup>4</sup> a substantial study, due to the collaboration of Professors Georges Scelle and René Cassin. The whole history of the efforts put forth for the organization of peace within the framework of the League of Nations, from 1919 to the present day, is placed before us, in the light of the sentiments, the preoccupations, the hopes and the fears of the French people

Canadian opinion is expressed by the three memoranda addressed to us by the Canadian Institute of International Affairs, in the form of individual monographs (Memoranda Nos 1 and 2)<sup>5</sup> and in the form of a general view (Memorandum No 3, Part 2)<sup>6</sup>

The Austrian Group has brought together in its Memorandum No 2, entitled *Austrian Opinion on Collective Security*,<sup>7</sup> the replies made by a series of outstanding personalities to a questionnaire which was addressed to them.

By the voice of its Director, M G Vladesco-Racoassa, the Rumanian Social Institute recalls the attitude taken by Rumania in the principal debates of the League of Nations, and brings out the general significance of its policy in regard to security (*Rumania and Collective Security*, Rumanian Memorandum No 1).<sup>8</sup>

Finally, if the Italian Group has not sent us a memorandum directly taken up with a study of this kind, those which bear the signatures

<sup>1</sup> See below, p 100

<sup>2</sup> See below, p 79

<sup>3</sup> See below, p 472.

<sup>4</sup> See below, p 66

<sup>5</sup> See below, p 49

<sup>6</sup> See below, p 54

<sup>7</sup> See below, p 126

<sup>8</sup> See below, p 97



of Professor Francesco Coppola (Memorandum No. 1)<sup>1</sup> and of Senator Roberto Forges-Davanzati (Memorandum No. 2)<sup>2</sup> are not without bearing on the question.

### *Fundamental Principles of the Problem of Collective Security*

The first part of the agenda decided upon by the Preparatory Conference is devoted to the fundamental principles of the problem. It is divided into two sections, whose objects are stated as follows:

- A. — The notion of Collective Security (Historical Evolution Definition)
- B. — The content — political, historical, moral — of the idea of Collective Security

The first task is to define the notion of Collective Security and consequently the very object of our undertaking. This notion must then be submitted to a critical examination. The idea of Collective Security no doubt exercises — especially since the World War — a powerful attraction on men's minds, but that is not a reason sufficient to justify it. It is possible that, in spite of its apparent seductiveness, this idea may prove, in the last analysis, to be false or dangerous. Before going on with our effort and trying to construct a system of Collective Security, it is therefore necessary to examine the bases of the problem. It is this preliminary requirement that the first part of the agenda provides for.

This aspect of the problem occupies relatively little space in our documentation. The greater part of the memoranda deals with the means to employ in order to organize a system of Collective Security without seeking to demonstrate the validity of this notion. Explicitly or implicitly they assume apparently as a sort of postulate the necessity of working toward this goal.

Some of them, it is true, consider that the attempts which have been made since the end of the World War, particularly within the framework of the League of Nations, proceed from erroneous conceptions, the fragility of which experience has revealed. Thus Mr. Graves, in a study entitled *The Prevention of War*, which forms a part of Memorandum No. 3 of the United Kingdom (*Some British Views on Collective Security, Part I*)<sup>3</sup> expresses the opinion that the system of the League of Nations has failed, because that system presupposed a psychological change which has not taken place. Similarly, Mr. Underhill, in one of the monographs of Canadian Memorandum No. 1 (*Canadian Foreign Policy in the 1930's*)<sup>4</sup> declares that the idealistic hypothesis on which the Wilsonian League was originally based was long ago shown to be without foundation. And several of the personal initiatives whose opinions

<sup>1</sup> See I. C. S. P. 144.  
<sup>2</sup> See I. C. S. P. 16.

<sup>3</sup> See I. C. S. P. 141.  
<sup>4</sup> See I. C. S. P. 43.



the Austrian Group has brought together in its Memorandum No 2 — notably M Ernst Ritter von Streeruwitz — formulate more or less analogous criticisms. But these observations do not lead their authors to condemn the idea of Collective Security itself. The consequence which they draw is that there must be a change of method and that the goal must be sought by other routes. Mr Greaves, for example, concludes in favour of the creation of an organization having super-state functions, — the only means, he thinks, of creating an effective system of security.

The Italian Memoranda Nos 1<sup>1</sup> and 2<sup>2</sup> of MM Coppola and Forges-Davanzati, on the contrary, attack the concept of Collective Security in its essence and resolutely contest its validity.

Professor Coppola recalls at the beginning of his Memorandum that he had already explained his ideas on this subject at the time of the Preparatory Conference at Paris. He considers that the events which have taken place since then only illustrate the accuracy of his thesis. For him, it is only by its own means that the State can satisfy it either by increasing its forces or by adding to them, by specific agreements, those of other States whose interests coincide with its own. In other words, each State can seek to maintain its security by a military policy and by a policy of specific alliances. "But it is absurd," says the author "to expect its need for security, legitimate, but individual, to become the major dogma of the international policy of all the other States."

The general obligation, extended to all or nearly all States, to take arms against the aggressor, constitutes, in the eyes of Professor Coppola, something "anti-historical" and "anti-human." A system of this sort involves, he says, a contradiction. It implies, on the one hand, that peoples are forbidden "to make war *according to nature*" (that is, for their national interests), and, on the other hand, that they are bound "to make war *against nature*" (that is, for reasons which have nothing to do with them). Moreover, the mechanism of such a system involves the universal extension of local wars. Finally, it involves "artificially immobilising history at a given moment of its perpetual development."

The Memorandum of Senator Forges-Davanzati, while it emphasises particularly the "living realities" which constitute the conditions of the problem at present, is based upon the same conception.

It is not the rôle of the Rapporteur to express his personal opinions, but simply to call attention to the elements of the discussion, as they appear in the documents placed at his disposal.

Without overstepping this limit, he may perhaps be permitted to raise the question whether the reasoning of Professor Coppola is not bound up with a particular conception of Collective Security. For Professor Coppola, any system of Collective Security carries with it

<sup>1</sup> See below, p 144

<sup>2</sup> See below, p 148.



necessarily reciprocal undertakings to render military assistance. It is a sort of military alliance enormously enlarged, organized on a universal scale.

There is no doubt that this conception is very widely held and that it finds support in the treaties in force (see, for example Articles 10 and 16 of the Covenant of the League of Nations). But one is not obliged to accept it. Professor Manning (*The Elements of Collective Security* — United Kingdom Memorandum No 3 *Some British Views on Collective Security* Part I)<sup>1</sup> calls our attention to the danger involved in limiting ourselves *a priori* to the interpretations which the practice of the League of Nations has placed upon the notion of Collective Security and notably in viewing this notion only from the standpoint of mutual assistance.

As several memoranda bear witness, one may be partisan of the organization of a collective system of security and still reject the method of military assistance in case of aggression.

On the other hand Professor Coppola takes care, in order to avoid any misunderstanding to emphasise the fact that his criticism of the notion of Collective Security is not to be understood as meaning that the task of trying to avoid war should be abandoned. It is possible in his opinion, "if not to prevent war entirely in the future, at least to make it more and more rare." But he believes that this end must be sought by other means, in the front rank of which he places the substitution for the system of rigid equilibrium of the system of elastic equilibrium or better of *flexible equilibrium* — a condition which, in his opinion, is indispensable in order to permit the legal equilibrium growing out of the treaties to be readapted from time to time to the real equilibrium of forces and of needs, without violent rupture that is, without war.

There is no doubt that on this point — which, in his opinion is of capital importance — the ideas of Professor Coppola coincide with those of a very large number of partisans of Collective Security. The memoranda which we have received prove it strikingly. The problem of the revision of treaties and of international situations occupies in fact in these memoranda, a considerable place. And whatever may be the opinions professed in regard to this problem (see below § IV) its importance and its connection with the collective organization of security are generally speaking fully recognised.

It is true that if the notion of Collective Security is not necessarily bound up with the use of this or that method it implies by definition the application of *effective* means (whatever these means may be) to ward off or reduce the danger of war. It is at this point apparently that we come upon the irreducible element which constitutes Collective Security from the traditional methods of which national armaments and special treaties are the most typical manifestations.



At this point a question arises which it is perhaps difficult to settle by a clear-cut formula: when may it be said that a system is of a collective character? In other words, what should be the extent of the collectivity involved in this system? Professor Manning, in his study already mentioned (United Kingdom Memorandum No 3 Part I),<sup>1</sup> replies that in the last analysis, the collectivity which we should have in mind is humanity as a whole, but that, for the purpose of the present enquiry, it is perhaps preferable to consider only the more limited collectivity known by the term "the family of nations." With this opinion may be compared that of Professor Schindler, of Zurich, who writes, in his Memorandum on *The Notion of Neutrality in a System including repression of resort to war*.<sup>1</sup> "a system of security can be truly collective only if it includes a large number of States. Otherwise, there is a risk that it may find itself in opposition with another system and may degenerate into a simple alliance of States like those which existed before the war."

In other words, if the notion of Collective Security does not require the organization of an absolutely worldwide system, it does assume the collaboration (in ways which may, however, be various) of a number of States which it is impossible to specify *ne varietur*, but which must be large enough to give it a quasi-universal character. It should be noted that the method of regional agreements, which will be specially discussed below (§ V,) is by no means regarded by its partisans as in opposition to this general conception. They present it merely as a special means, — in their opinion, particularly effective —, of realising, in a given region, the common objective.

The question has been raised whether Security is a form of political organization or a state of mind. This question, which the British Co-ordinating Committee had formulated before the meeting of the Preparatory Conference, is answered incidentally by several Memoranda, some of them (notably that of Professor Coppola) stressing chiefly the subjective character of Security, others laying the emphasis rather on the importance of its objective aspect.

The two meanings of the word are clearly distinguished in Italian Memorandum No 3, the author of which, Professor Ferrari dalle Spade, expresses himself on this subject as follows:

"Security, in the subjective sense, is the certitude that a State has that its political independence and its integrity will be respected by other States and that none of the latter will try to disturb the existing situation by individual acts of force.

"In the objective sense, security is the sum of the guaranties existing in favour of a State to protect it against possible aggressions."

M. Gerhart Niemeyer, in Spanish Memorandum No 3 *On the nature*

<sup>1</sup> See below, p. 419



of *Collective Security*<sup>1</sup> bringing out the connecting links which unite these two notions, shows that they are practically inseparable.

### *Prohibition of Recourse to Force*

The second part of the agenda is entitled "Principles and Methods of a System for the Organization of Peace." As my report of the month of June recalls, the term "organization of peace" was intentionally employed as a synonym of the expression "Collective Security," in order to make it clear that the two notions are identical.

This part of the programme is divided into three main sections

- (a) Prohibition of Recourse to Force
- (b) Prevention of War
- (c) Repression of War

Collective Security or the organization of peace, carries with it necessarily — by definition, it may be said —, a more or less far reaching renunciation by States of the use of armed violence to secure justice for themselves and, to put it more generally to make their will prevail. It is possible that this renunciation may not be considered by some as an essential element of the system. It is possible that in their eyes, other parts of the undertaking may have a greater practical importance for example, that which concerns the means of settling international difficulties and of preventing war by reducing its causes or again, that which has to do with the organization of the repressive measures to be set in motion against the aggressor. Whatever may be the conflicting opinions on this subject everyone will recognise that the principle of

"non recourse to force," to use an expression which is more and more widely current necessarily has a place in any system of Collective Security. The only question is just how far this principle should be carried. Is it sufficient as is the case in the Covenant of the League of Nations to set up *certain* obligations not to have recourse to war? "Is it necessary to go farther and to condemn war in general as an instrument of national policy" according to the formula of the Pact of Paris of 1928? Is there reason to assimilate to war those measures of armed coercion which the jurists distinguish under the names of reprisals, pacific blockade etc. from "war" proper?

During the past fifteen years diplomacy has frequently worked on this problem and has brought it nearer solution. On certain points



however, the law which is in force remains incomplete or uncertain. In any event, a Conference such as ours can consider the existing conventions only as an element to be taken into consideration in establishing its conclusions.

The problem of recourse to force has not specially occupied the attention of the Members of the Conference. However, certain memoranda consider it in passing.

The majority of those who express an opinion on this subject declare in favour of a prohibition applying not only to war, but also to measures of armed coercion, whatever name they may be given. This is the view very clearly upheld, for example, by Professor Georges Scelle, in his *Theory of International Government* (New Commonwealth Institute, Memorandum No. 2),<sup>1</sup> in which he points out that the distinction between "war" and "reprisals" can be based only on a subjective criterion, which makes it, in practice, particularly dangerous from the point of view which concerns us. Professor Verdross likewise makes a declaration in this sense, in the study entitled *Plan on the organisation of Peace. observation on the French proposals of November 14, 1932*,<sup>2</sup> which forms the contents of Austrian Memorandum No. 1, and so do Professor Pella (*The Determination of the Aggressor* — Rumanian Memorandum No. 5),<sup>3</sup> Mr. Alan B. Plaunt (*Collective Security* — Canadian Memorandum No. 3), etc.<sup>4</sup>

Among the partisans of this view must be grouped also all those who, in discussing the determination of the aggressor, have declared in favour of the "Politis-Litvinoff" formula. We shall pause to discuss this question at the proper time, but it is fitting to point out here that this formula implies a rigorous conception of renunciation of force and that it is therefore impossible to accept it without accepting the principle which underlies it.

The same is true of the suggestion made by President Roosevelt in his Communication of May 16, 1933, to the heads of the States represented at the Disarmament Conference: "That they should solemnly reaffirm the obligation they have assumed to limit and to reduce their armaments, and, provided these obligations are faithfully executed by all signatory Powers, individually agree that *they will send no armed force of whatsoever nature across their frontiers*." This formula, to which several authors of Memoranda give their approval, manifestly carries with it a renunciation not only of war, but also of all forms of military coercion. Professor Jessup, who cites it in his study *International Security*,<sup>5</sup> and seems to receive it personally with favour, points out, however, that it was linked, in President Roosevelt's mind, to the conclusion of a disarmament Convention, and that it would doubtless be difficult for the American Government to subscribe to it if it were isolated from the whole of which it formed a part.

<sup>1</sup> See below, p. 476

<sup>2</sup> See below, p. 189

<sup>3</sup> See below, p. 317

<sup>4</sup> See below, p. 295

<sup>5</sup> See below, p. 100



Certain Memoranda, while approving the principle of non-recourse to force in its broad sense, reveal nevertheless some hesitation about making this principle absolutely rigorous.

The *Memorandum on Collective Security*<sup>1</sup> presented to the Preparatory Conference by the Dutch Committee and due to the collaboration of Councillor of State Limburg and of Professor Verzijl, expresses the opinion that the prohibition of recourse to force 'requires certain attenuations for cases of emergency such as that of the immediate necessity of sending help to nationals in danger of death in a foreign country in consequence of serious international disorder. The authors of this Memorandum, however hasten to add 'The delicate character of this exception, to be sure, calls for special guaranties, consisting for example in the requirement of an authorisation granted beforehand by a qualified organization.

A similar preoccupation appears in the study of Mr Arnold-Forster (*The Collective Peace System and British Policy* — United Kingdom Memorandum No 3 Part I)<sup>2</sup> who, after having manifested his sympathy for a complete renunciation of the use of armed coercion, brings out certain difficulties which the application of this principle on a universal basis would encounter and suggests a system permitting the use of force in exceptional cases (those which have to do with protecting nationals in grave danger abroad), but requiring that the question be laid immediately before the Council of the League of Nations for examination and decision.

The undertaking not to have recourse to war and generally, to armed force is in most cases understood not to limit in any way the right of legitimate defence: it is understood even to allow the use of coercion either in the application of a sanction or as a means of ensuring the execution of an international decision for example of an arbitral or judicial award. In other words the hypothesis to which this renunciation applies is that contemplated by the Pact of Paris when it condemns war as an instrument of national policy.

Such at least is the conception which the majority of the memoranda relative to the question reflect.

It is, however necessary to call attention to a different theory which is accepted by Dr Georg Cohn who in a study entitled *The System of Sanctions derived by Article 16 of the Covenant and the Future of Neutrality* (Danish Memorandum No 1)<sup>3</sup> declares in favour of a system directed against war as such. In his eyes defensive war as well as offensive war ought to be considered as an anti-social act and to give rise to the



*The Prevention of War*

The chapter is subdivided as follows

- (1) Means of ensuring the progress of law and the respect of justice apart from war
- (2) Means of ensuring the maintenance of peace in case of threat of war
- (3) Peaceful settlement of international disputes
- (4) Reduction and limitation of armaments
- (5) Respect of international agreements    Revision of treaties and international situations

Points 1, 3 and 5 are so intimately related to one another that it would perhaps be difficult, without setting up artificial distinctions, to separate them into water-tight compartments. In my June report, in developing the commentary on the agenda, I had already been led to group them together. The experience growing out of the memoranda which have reached us seems to confirm the practical necessity of this grouping.

The first title states the problem in general terms — to ensure the progress of law and the respect of justice apart from war. Violence is not an end in itself, it is only a means to an end. If we suppress this means, if we undertake to eliminate it from international practice, we must of necessity replace it by others, — and these other means, in a system of Collective Security, can only be peaceful means. To proclaim non-recourse to force, without setting up methods capable of filling peacefully the rôle which, historically, has been that of war, would only be a limping solution, ill-balanced, and headed, in the long run, for certain failure. There may be room for discussion as to which of the two terms should be stressed, the question might conceivably arise as to which should be taken up first, but it seems that one can hardly fail to recognise the solidarity which binds them together.

As to the questions raised under topics Nos 3 and 5 (peaceful settlement of international disputes, respect of international agreements, revision of treaties and international situations), they are really only important aspects of this same problem, particularly outstanding points along the road which one follows when one undertakes the study of that problem.

At this point we reach one of the parts of our task which have most attracted the attention of the Members of the Conference. The number of memoranda which deal with it is large, and one feels, in reading them, that their authors in general attach to this subject a decisive importance.

Upon the principle itself, — and I mean by that the necessity of organizing peaceful methods as a substitute for the use of force —, there seems to be unanimous agreement.

But this unanimity disappears when the difficulty is examined more closely and when the question arises as to what should be the rôle of these peaceful methods. Before determining their organization, the bodies to which they shall be entrusted, the methods which may



best be used in applying them a question arises what purpose should they serve? What must we require of them?

Two principal tendencies appear in regard to this point. The opinions expressed in the documentation at the disposal of the Conference agree up to a certain point, then diverge and end by differing sharply on one point, which the present political situation does not perhaps, make it easier to discuss calmly the revision of treaties and of international situations.

As I indicated in my June Report the problem of peaceful methods appears under widely different aspects according as the methods are destined to *ensure the application of the law non in force* or to *ensure the modification of that law*.

When two States are engaged in a dispute as to the nature or the extent of their rights, the conflict in which they are involved must be settled. But, whatever may be the practical importance of the affair and whatever may be the means to which recourse is had to bring about its settlement, there is no question of creating new rules or of modifying the balance of established rights. All that the States involved in the dispute ask is a correct application of the existing law.

In such a case the problem is relatively simple. To be sure the details of the solution to be applied may be discussed the question may arise whether judicial or arbitral settlement is preferable to conciliation whether arbitration should be compulsory or optional whether the obligation to accept arbitration when it is assumed may be accompanied by reservations etc. At least everyone agrees that it is desirable to see peaceful methods developed for the settlement of disputes of this sort.

But the problem takes on a different aspect when it is no longer a matter of applying existing law but of modifying it. It is this role that war has often played in history. It sometimes happens it is true that States resort to arms alleging as their motive the violation of their rights. But in reality by its causes and by its effects war appears much more as a force of upheaval of transformation than as an instrument of coercion in the service of the *status quo*. If war is outlawed what agency will fulfil this function? What peaceful means will take the place for the performance of this task of warlike means?

It is at this point that the two contradictory tendencies alluded to above become manifest.

One of them attentive primarily to the dangers which may be presented by the organization of a dynamic system even by peaceful methods and fearing such a system particularly when it is applied to the revision of territorial situations is inclined to seek collective security in the maintenance and the guaranty of the established order. If it be admitted that this order may be modified it is only subject to the decision of all the States concerned and provided that no State is permitted to alter unilaterally the existing situation.



The other tendency, on the contrary, without ignoring the complex and delicate character of the problem, sees with especial distinctness the danger involved in regarding security as a system destined to immobilise historical development. For this school, the working out of methods looking to greater flexibility and to the possibility of revision constitutes an essential part of the organization of peace.

The first of these two tendencies is manifested particularly in two Rumanian Memoranda (Memorandum No. 2, *The means of ensuring the progress of Law and the respect of Justice outside of War* by Professor Sofronie,<sup>1</sup> — Memorandum No. 4, *Revision of Treaties and international situations*, by M. Michel Antonesco),<sup>2</sup> — in the Polish Memorandum No. 2 (*The respect of international obligations — Revision of Treaties and international situations*, by Professor Ludwik Ehrlich)<sup>3</sup>, and in the Dutch Memorandum, drawn up before the Paris Conference, by Messrs Limburg and Verzijl.<sup>4</sup>

M. Michel Antonesco, in particular, makes a frontal attack on the principle. The revision of treaties and of international engagements, far from being, in his eyes, a means of obtaining collective security, appears to him as "the Trojan Horse of the present international organization." It creates, he says, insecurity and instability. It weakens the basic norm of international law, "*pacta sunt servanda*." It makes the principle of nationalities aggressive and becomes a cause of disturbances not only in the international sphere, but in the interior of States as well. Finally, the revisionist doctrine collides with practical impossibilities. No State, according to the author, would agree to give up the individualist system in exchange for a system of collective security, if this change obliged it to allow itself to be despoiled of certain established rights which it considered essential.

The other tendency is visibly that which has found the greater response among the Members of the Conference. The memoranda in which it is expressed are numerous.

Before the meeting of the Preparatory Conference at Paris, the Spanish group had already shown its interest in the question by sending us a study by M. Gaspar Bayón y Chacón, Professor in the University of Madrid (*Revision of unapplicable treaties and of legal situations endangering Peace*), which suggests various reforms destined to complete, improve and strengthen the system set up by Article 19 of the Covenant of the League of Nations.

M. Bayón y Chacón has resumed and developed the exposition of his ideas in a new study entitled "Respect of international obligations. Revision of Treaties and international Situations," which has just reached us and which constitutes the contents of the Spanish Memorandum No. 2.<sup>5</sup>

We were likewise already in possession at that moment of

<sup>1</sup> See below, p. 231.

<sup>2</sup> See below, p. 237.

<sup>3</sup> See below, p. 218.

<sup>4</sup> See below, p. 216.

<sup>5</sup> See below, p. 241.



Austrian Memorandum No. 1 the work of Professor Verdross of the University and of the Konsularakademie of Vienna (*Plan for the organization of Peace observation on the French proposals of November 14 1932*)<sup>1</sup> which concludes in favour of the creation of a Court of Revision — a necessary condition, he says to the realisation of a just order without which the prohibition of recourse to force cannot become effective.

Under the signature of Professors Le Fur and Geouffre de la Pradelle, the French group has sent us a substantial study on *The revision of Treaties*<sup>2</sup> the conclusions of which come very near as the authors point out, to those reached by Professor Bayón y Chacón. The respect due to treaties, they declare must be firmly proclaimed and the idea that they have only a conditional value must be rejected. "But, just as the principle of the legal validity of treaties appears as incontestable, so it is equally certain that a treaty cannot be eternal." Law being a rule of life, cannot oppose life it must evolve with life in order to be able to continue to adapt itself to life. And, going on to grapple with the problem in its concrete difficulties MM. Le Fur and Geouffre de la Pradelle stress the inadequacy of Article 19 of the Covenant of the League of Nations and suggest the adoption of certain reforms which would give it the effectiveness which it now lacks.

Among the monographs brought together in Memorandum No. 3 of the United Kingdom (*Some British Views on Collective Security*) that which Dr. D. Mitrany has entitled *The Problems of Peaceful Change and Article 19 of the Covenant*<sup>3</sup> is essentially concerned as its title indicates with the same subject and, apart from some differences of detail, it is based on the same fundamental idea. A political society "says Dr. Mitrany must possess laws and organs capable of attaining two essential and inseparable objects (1) to ensure the peaceful character of social life — (2) to ensure its progressive character" and he observes that as regards this second necessity the international order has made progress.

The same British Memorandum contains moreover several other studies which are conceived in the same spirit or which provide their authors with the occasion to express similar views such in particular are the studies of Professor Manning *The Elements of Collective Security*<sup>4</sup> of Mr. Arnold Forster *The Collective Peace System and British Policy*<sup>5</sup> — of Mr. H. R. G. Greaves *The Principles of War*<sup>6</sup>.

Memorandum No. 10 of the New Commonwealth Institute is devoted under the signature of Mr. H. H. Hall Carter<sup>7</sup> to the revision of treaties and comes out likewise very clearly in favour of the creation of an adequate procedure. The same is true of Memorandum No. 11 of the same Institute (Peace and International Law) *Principles of Peace Treaties*<sup>8</sup> (*Principles of Peace*)

<sup>1</sup> See below p. 11.  
<sup>2</sup> See below p. 14.

<sup>3</sup> See below p. 13.  
<sup>4</sup> See below p. 14.  
<sup>5</sup> See below p. 11.

<sup>6</sup> See below p. 14.  
<sup>7</sup> See below p. 11.

<sup>8</sup> See below p. 11.



Professor J H Richardson, in a study entitled *Memorandum on Collective Security*,<sup>1</sup> submitted to the Conference by the Geneva School of International Studies, considers as essential the question of peaceful modifications of the *status quo*

Professor Jessup (*International Security*)<sup>2</sup> stresses the fact that the stabilisation of peace cannot be identified with the stabilisation of the *status quo*

The same spirit underlies the contribution of Mr Underhill to Canadian Memorandum No 1 (*Canadian Foreign Policy in the 1930's*),<sup>3</sup> — Canadian Memorandum No 3 (*Collective Security*, Rapporteur, Mr Alan B Plaunt),<sup>4</sup> — the very detailed study of M Germain Watrin on *Legal and Political Aspects in the Organization of International Justice* (French Memorandum No 3),<sup>5</sup> — as well as the majority of the replies to the questionnaire of the Austrian Group (Austrian Memorandum No 2)<sup>6</sup>

Finally, we recognise here the central idea which dominates the constructive part of Italian Memorandum No 1.<sup>7</sup> Professor Coppola, as we have already pointed out, considers the flexibility of the international system as the best means of making wars more and more rare. The treaties of peace, he says, "establish a formal, legal equilibrium, which corresponds to the real equilibrium of forces at that moment." But little by little, the real equilibrium of living forces changes, and a moment comes when this equilibrium is no longer in harmony with that of the treaties. If you make the formal equilibrium more rigid and solid, you will perhaps make it possible for it to resist a little longer, but when it collapses, as is inevitable, it will be with greater violence and with greater damage.

If we admit the necessity of rendering the legal order, as it is expressed notably in the treaties, more flexible and of providing for its revision, the question is how, by what methods, and following what procedures this may best be accomplished. The point is without doubt very important, but the Conference will probably refrain from entering into a detailed examination of it, because of the markedly technical character which it presents. We are neither a diplomatic assembly nor a commission of jurists charged with working out a system.

It is, however, within our province, without examining the matter further, to observe that two main roads are open to our choice.

We may seek the solution of the problem in the development of arbitration, in the broad sense of the term. The movements which may be observed in the international order in favour of modifications to be made in that order assume, more often than not, the form of "disputes." Why not have these disputes settled like the rest? Why not confide their solution to a court or tribunal of arbitration?

It may also be asked whether this first solution is really adequate

<sup>1</sup> See below, p 252

<sup>2</sup> See below, p 100

<sup>3</sup> See below, p 49

<sup>4</sup> See below, p 192

<sup>5</sup> See below, p 201

<sup>6</sup> See below, p 126

<sup>7</sup> See below, p 144



to the nature of the problem. Certainly the arbitrators charged with settling a dispute of this sort would not be able to do it by applying positive law they would have to base their decisions on principles and considerations foreign to that science. They would nevertheless remain *judges* " and some people consider that, as the task to be accomplished is much less a *judgment* than a *political construction*, it is preferable to call upon organisms and methods of a more political character

Article 19 of the Covenant of the League of Nations is related to this second conception, and several of the memoranda already cited contain very interesting remarks relative to its interpretation and to changes which should be made in it.

An interpretation of this article opposed to revisionist tendencies is given in Rumanian Memoranda No 2 (M. Sofronie)<sup>1</sup> and No 4 (M. Michel Antonesco)<sup>2</sup> as well as in Polish Memorandum No 3 of Professor Ehrlich.<sup>3</sup>

Proposals tending to strengthen the system of Article 19 appear in the Spanish Memorandum of Professor Bayón y Chacón,<sup>4</sup> in the French Memorandum of Professors Le Fur and Geouffre de la Pradelle,<sup>5</sup> in Canadian Memorandum No 3<sup>6</sup> in the study of Dr D. Mitrany *The Problem of Peaceful Change and Article 19 of the Covenant* (United Kingdom Memorandum No 3)<sup>7</sup> and in the Memorandum of Professor Gemma (*Some Legal Aspects of the Problem of Collective Security* Italian Memorandum No 4)<sup>8</sup>

Professor Hans Kelsen (*The Legal Process and International Order* — New Commonwealth Institute. Memorandum No. 1)<sup>9</sup> after having recalled the conditions in which internal societies have evolved concludes that the effort of international organization should be concentrated, at the present stage, on the judicial function. What the international order needs, he says is a good judicial system especially in order to ensure the modification of the *status quo* established by the peace treaties and considered unjust by many

Similarly in Austrian Memorandum No 1<sup>10</sup> Professor Verdross calls for the creation of a "Court of Revision." In Memorandum No 10 of the New Commonwealth Institute (*Treaty Revisibility*)<sup>11</sup> Mr Horsfall Carter likewise comes out in favour of the creation of a "permanent tribunal of Equity" and we might cite in the same sense various other Memoranda emanating from the New Commonwealth Institute.

Austrian Memorandum No 2<sup>12</sup> likewise contains the expression of several individual opinions favourable to the creation of a Court of Revision.

<sup>1</sup> See below p. 231

<sup>2</sup> See below p. 241

<sup>3</sup> See below p. 209.

<sup>4</sup> See below p. 189

<sup>5</sup> See below p. 237

<sup>6</sup> See below p. 195

<sup>7</sup> See below p. 213

<sup>8</sup> See below p. 483

<sup>9</sup> See below p. 225

<sup>10</sup> See below p. 191

<sup>11</sup> See below p. 476.

<sup>12</sup> See below p. 117



The partisans of arbitration are led to set up a distinction between legal disputes and political disputes. I cannot think of undertaking here the examination of this question, which has given rise in legal writings to interminable controversies. May I confine myself to calling attention to a few Memoranda which throw a useful light on the subject? M. Germain Watrin has devoted to it the study which forms the contents of French Memorandum No 3<sup>1</sup> (*Legal and Political Aspects in the Organization of International Justice*). MM. José Gascón y Marín and Pedro Cortina Mauri in Spanish Memorandum No 1<sup>2</sup> (*Peaceful Solution of International Conflicts*), Professor Ehrlich, in Polish Memorandum No 3<sup>3</sup> (*Legal Conflicts and Conflicts of Interest*), M. Radbruch, in Memorandum No 6 of the New Commonwealth Institute<sup>4</sup> (*The Role of Equity in the Efforts towards International Justice*), Dr. Verosta, in Austrian Memorandum No 3<sup>5</sup> (*Legal Disputes and Conflicts of Interest*), M. Constantin Vulcan, in Rumanian Memorandum No 3<sup>6</sup> (*Peaceful Settlement of International Disputes*) make valuable contributions to the question.

The monograph which Dr. Georg Schwarzenberger has written on the ideas and the influence of William Ladd (New Commonwealth Institute Memorandum No 5)<sup>7</sup> will also be consulted on this point with interest.

Finally, a basic question, at once very important and very delicate, arises. In the light of what rules or of what principles is it possible to settle conflicts which, by their very nature, lie outside the field occupied by the law in force? Is the judge, or, more generally, the organ charged with working out the solution of the crisis, to base his decision on political expediency as he sees it? Or shall he be bound by certain principles, more flexible, indeed, than the formal rules of positive law, but derived nevertheless from legal principles?

Various highly interesting studies which we owe to the New Commonwealth Institute are devoted to this problem. I wish to call attention particularly to that of Mr. Max Habicht (Memorandum No 3),<sup>8</sup> who makes a penetrating analysis of the question in what measure the present state of the law permits an international judge to pass judgment *ex aequo et bono*, — to that of Dr. Wolfgang Friedmann (Memorandum No 7),<sup>9</sup> who examines the English maxims of *Equity*, as well as the principles of *Trust*, and raises the question how far these elements can be utilised in the international order, — to those of Mr. Radbruch (Memorandum No 6)<sup>10</sup> and of Mr. H. Krauss (Memorandum No 11),<sup>11</sup> who likewise undertake a critical examination of the idea of *Equity*. In a slightly different but related field, may be noted the remarks made in Memorandum No 8<sup>12</sup> of the New Commonwealth Institute by Lord

<sup>1</sup> See below, p. 201

<sup>4</sup> See below, p. 480

<sup>7</sup> See below, p. 479

<sup>10</sup> See below, p. 480

<sup>2</sup> See below, p. 241

<sup>5</sup> See below, p. 190

<sup>8</sup> See below, p. 476

<sup>11</sup> See below, p. 483

<sup>3</sup> See below, p. 225

<sup>6</sup> See below, p. 234

<sup>9</sup> See below, p. 481

<sup>12</sup> See below, p. 483



Davies, who draws an interesting parallel between the solution of international disputes and that of conflicts arising within a State between employers and workingmen's organizations.

The question of the use which the international order might make of the English system of *Equity* is likewise taken up by Professor Ehrlich (*The development of international law and the Problem of Collective Security* — Polish Memorandum No 1)<sup>1</sup> But the author reaches a negative conclusion. The application of this system or of a similar system seems to him to be in contradiction with what he considers the fundamental principle which subordinates the binding character of the rules of international law to the acceptance of the States.

The Preparatory Conference linked to this part of the agenda the question of moral disarmament for the Conference felt that a logical connection could be established between this question and the respect of international agreements

As far as this latter principle is concerned, it is perhaps proper to note in the present report that its validity and its importance are unanimously recognised by the Members of the Conference. It is, quite naturally and as the agenda indeed suggests in connection with the problem of "revision" that it has been examined. And, if revision has its partisans and its adversaries, all are agreed on one point that is that international agreements, so long as they are not abrogated or modified by regular procedures keep their binding character and must be fully observed.

As to the problem of moral disarmament two Memoranda have been specially devoted to it Danish Memorandum No 2 of Dr. Georg Cohn entitled *The Causes of War and Moral Disarmament*<sup>2</sup> and Canadian Memorandum No 1 of Mr Fyfe entitled *Notes on Moral Disarmament*<sup>3</sup> Some considerations on the question will also be found in the Memorandum which the Prague School of Political Science presented to the Preparatory Conference under the title *Some Preliminary observations concerning the question of Collective Security*

The question stated under No 2 of the chapter relative to the prevention of war is thus worded Means of ensuring the maintenance of peace in cases of threat of war

This question has not been the object among us of systematic studies. It must be recognised that it has given rise especially at the League of Nations to numerous studies and that there would no doubt be little to add to the conclusions reached by those studies

It is however proper to note the very interesting remarks which Professor Jessup makes (*International Security*)<sup>4</sup> concerning the system of "Consultation" and the possibility of the United States participating in such a system

<sup>1</sup> See below p 112

<sup>2</sup> See below p 216

<sup>3</sup> See below p 217

<sup>4</sup> See below p 100



The reduction and limitation of armaments had also been listed by the Preparatory Conference as one of the aspects of the prevention of war (4th subdivision of the chapter)

Two of the Memoranda which we have received are specially devoted to this problem.

M R Guillien (*The Preventive Organization of Security through the Sanction of the Armaments Convention* — French Memorandum No 6)<sup>1</sup> takes as his point of departure the observation that the repression of war meets an obstacle which is hard to surmount — namely, that the only sanction that can be opposed to war is recourse to war itself. Other sanctions are either ineffectual or lead to this one. But, he says, if one “feels little remorse over the execution of a criminal known to be guilty, it may be not without anguish that one hurls nation against nation for reasons which often remain obscure. The States opposed to sanctions have therefore the right to affirm and to point out to other States that, with unquestionably pure intentions, there is a risk of generalising the use of a remedy which, through the play of inter-State understandings, becomes rapidly more dangerous than the disease.” The great question for him is to find a sanction which is not war, and which, nevertheless, functions in conditions which allow it to fulfil its purpose. The only means of solving the problem is “to apply the sanction at a moment such that it will completely forestall war.” This result would be attained by the establishment of a Convention for the limitation of armaments and of sanctions for the violation of this Convention. The author, having stated the principle, passes in review the chief requirements which its application would have to meet — effective and permanent control — a system of presumptions based either on material indications or on psychological symptoms such as “moral rearmament,” and determination by an international organ of the sanctions to be applied, first diplomatic sanctions, then economic sanctions.

Polish Memorandum No 5 has as its author M Stanislaw E Nahlik. It is entitled *The Problem of Control and the Work of the Disarmament Conference*.<sup>2</sup> M Nahlik sees in this control “the keystone of the whole system of Collective Security.” Properly worked out, the system would make it possible to discover in time the dangers which, if not rapidly remedied, would risk leading to war or to crises in the face of which the belated action of the collective organization would perhaps be ineffectual, — and here the reasoning of M Nahlik agrees with that of M Guillien. On the other hand, the regular functioning of an impartial control would have a salutary psychological effect and would help to give to the nations a sentiment of security which they do not enjoy at present.

The author, summing up the achievements of the Preparatory Commission and of the Disarmament Conference, stresses the evolution which has taken place in current ideas in this respect. He draws

<sup>1</sup> See below, p 284

<sup>2</sup> See below, p 285



up the table of the results obtained, as they appear from the most recent documents

Apart from the two monographs which have just been cited, remarks on the question of disarmament will be found here and there in other memoranda. For example, that which Professors Georges Scelle and René Cassin have prepared on *French Opinion and the Problem of Collective Security*<sup>1</sup> devotes many pages to it. In them is set forth especially the position which France has taken and the part that she has played in the discussions at Geneva. Attention is likewise directed to certain aspects of the problem the solution of which might contribute to the increase of security

Similarly the work of Professor Jessup (*International Security*)<sup>2</sup> gives a large place to the question of disarmament. It makes it possible for us to grasp very accurately the position of the United States and the influence which the conclusion of a general Convention for the reduction and limitation of armaments might exert upon that country's attitude towards the problem of Security

### *Repression of War*

This chapter comprises three subdivisions

- (1) Determination of the Aggressor
- (2) The notion of neutrality in a system providing for the repression of recourse to war
- (3) Measures of mutual assistance, and sanctions. Regional agreements.

#### *Determination of the Aggressor*

The repression of war presupposes the violation, after such violation has been condemned, of the fundamental norm — the prohibition of recourse to armed force. In spite of efforts of a preventive character there has been an unlawful use of violence. The problem is to direct the reaction of society against the guilty party and in the interest of the victim. Unlike what happens under the system of preventive action the collective society here becomes active against someone and no longer merely against war itself. It is true that the essential object of sanctions and of assistance is likewise preventive by means of the undertakings entered into: it is hoped that the potential aggressor may be halted by placing before him the prospect of a sufficiently grave risk. Nevertheless if we consider in themselves the measures in question, at the moment when they come into play their preventive character disappears and is completely replaced by the idea of repression.<sup>3</sup>

<sup>1</sup> See below p. 66

<sup>2</sup> See below p. 102.

<sup>3</sup> In the system proposed by Dr. Georg Cohn (Danish Memorandum No. 1 — see above, p. 403), as the sanctions are directed not against the aggressor but against all belligerent States, the problem which we are examining here does not arise. Dr. Cohn, indeed, proposes repressive measures but they are directed against war as such.



The first question which logically arises in such a case is that of the determination of the aggressor, for, if we do not succeed in identifying the guilty party, repression is necessarily paralysed. In this connection, two points in particular require attention.

(1) On the one hand, who is to be competent to proceed to this determination;

(2) On the other hand, on the basis of what criteria is the determination of the aggressor to be made.

M. A. Camille Jordan has devoted to this question, under the title *The Definition of the Aggressor*, a study which forms the contents of French Memorandum No. 4.<sup>1</sup>

The author, after passing in review the history of the principal attempts at definition and particularly those which have succeeded one another since the World War (Covenant of the League of Nations, Draft Treaty of Assistance, Rhine Pact of Locarno of 1925, Pact of Paris of 1928), proceeds to analyse what he calls "the definition of London of July, 1933."

This definition, due to the initiative of the U.S.S.R., and which was presented to the Disarmament Conference with the backing of a remarkable report by M. Polius, has become, it will be recalled, an integral part of the pacts of non-aggression signed at London in July, 1933, by the Soviet Government with a certain number of other States. M. A. Camille Jordan brings out its merits and makes a reply to the objections which it has called forth.

Professor Pella (*The Determination of the Aggressor*—Rumanian Memorandum No. 5),<sup>2</sup> Mr. Plaunt (Canadian Memorandum No. 3) and Mr. Horsfall Carter (*Naming of Aggressor*—New Commonwealth Institute Memorandum No. 12)<sup>3</sup> also declare in favour of this formula, praising particularly its clearness and precision. Mr. Horsfall Carter points out that it separates the notion of aggression from the question of provocation and, quite generally, from all considerations relative to what has happened prior to the outbreak of violence. He considers this an advantage. Others, on the contrary, think that the Russian definition runs the risk, because of this peculiarity, of leading to artificial results by no means corresponding to the real state of responsibilities.

Professor Richardson (*Memorandum on Collective Security*, Geneva School of International Studies)<sup>4</sup> is of the opinion that, from the standpoint of the functioning of assistance, it may prove to be impossible to ignore the question of provocation. MM. Limburg and Verzijl (Dutch Memorandum on Collective Security)<sup>5</sup> question whether a definition of the aggressor "could ever suffice to provide a satisfactory solution for the various political situations which it is intended to cover." Mr. Arnold Forster (*The Collective Peace System and British Policy*—United Kingdom Memorandum No. 3, Part 1)<sup>6</sup> observes

<sup>1</sup> See below, p. 296

<sup>2</sup> See below, p. 317

<sup>3</sup> See below, p. 484

<sup>4</sup> See below, p. 319

<sup>5</sup> See below, p. 312

<sup>6</sup> See below, p. 305



that the British Government has taken a stand against the idea of a precise definition of the aggressor. Perhaps he says the best solution lies between this negative attitude and the rigidity of a mechanical formula. There are advantages in defining the extent of the renunciation of the use of force. The danger lies in adopting a sort of automatism oblivious to realities which may be very important, but which are not specifically contemplated by the rule to be applied. Mr Arnold Forster sees the remedy in the intervention of an international authority for which this rule would be a guide, but which would nevertheless have power, in doubtful cases to take the measures required by the situation.

Mr. Greaves (*The Prevention of War* — United Kingdom Memorandum No 3)<sup>1</sup> comes to similar conclusions. The author enquires particularly what this authority might be, and proposes the creation of a Committee, to be composed, like the Mandates Commission, of personalities as independent as possible (International Police Board).

It is to be noted that Canadian Memorandum No 3<sup>2</sup> as well as the Dutch Memorandum of MM. Limburg and Verzijl,<sup>3</sup> likewise declare in favour of the determination of the aggressor by an international organ.

In this connection are to be recalled also the remarks of Professor Jessup already cited, on the subject of the possibility of the United States participating in consultations on the basis of the Kellogg Pact.

We may note, finally the approbation given to the Consultation procedure by Professor Pella, one of the active partisans of the Soviet formula (Rumanian Memorandum No. 5)<sup>4</sup>

### *The Notion of Neutrality in a System providing for the Repression of War*

This problem the importance of which is evident at once from the point of view of theory — for it touches on certain fundamental conceptions — and from the practical point of view — for it exercises a direct influence on the whole construction of the régime of sanctions and of mutual assistance — has been the object of very interesting studies which will certainly occupy a notable place in our study as a whole.

The study of Dr Georg Cohn (*The System of Sanctions devised by Article 16 of the Covenant and the Future of Neutrality* — Danish Memorandum No 1)<sup>5</sup> has already been cited in connection with the prohibition of the recourse to force.

It embodies a general conception different from that on which the other Memoranda are based. As was explained above Dr Cohn, looking at the question from the viewpoint of the *lex ferenda* considers that the crime ought not be the aggression, but war itself. In consequence he does not accept the idea that the disinterested States are

<sup>1</sup> See below p. 309

<sup>2</sup> See below p. 295

<sup>3</sup> See below p. 312

<sup>4</sup> See below p. 317

See below p. 401



to find themselves obliged to make a choice, to proceed to a judgment — which would be very delicate and very serious —, and to base their attitude on a discrimination between the aggressor and the victim of the aggression. What he proposes is not abstention, but the application to *all belligerents* of a whole body of measures directed against war as such. The legal status of the disinterested States might still be called “neutrality,” it would maintain the balance between the belligerents and would involve with respect to them a fundamental impartiality.

It would, however, be very different from the neutrality which was developed in the course of the XIXth century and which was defined in the Hague Conventions of 1907 and in the Declaration of London of 1909, since it would break with the rule of abstention.

As to the *lex lata*, Dr Cohn points out that the system of the Covenant of the League of Nations does not exclude the notion of neutrality, but implies the necessity of combining it with the requirements of a new system.

Professor Scelle outlines the bases of this new system, characterised by an attempt to organize the international Community, in his *Theory of international Government* (New Commonwealth Institute — Memorandum No 2)<sup>1</sup> From the particular viewpoint which concerns us at the present moment, the author's conclusion is that neutrality is destined to disappear. The natural evolution of the League of Nations, he says, tends to substitute “police” for “war,” to eliminate the use of armed coercion as an instrument of national action and to organize it as a method of the collective realisation of Law. At the end of this evolution, the notion of neutrality necessarily disappears, since the very object to which it applies (the armed conflict of two national policies) no longer exists.

Taking his stand on the ground of the law in force and adopting as his basis the system of the League of Nations, Dr Lauterpacht (*The Notion of Neutrality in a System providing for the Repression of Recourse to War* — United Kingdom Memorandum No 3, Part 2)<sup>2</sup> undertakes a penetrating analysis of the subject. He examines the various hypotheses in which the Covenant may be applied, and asks, in regard to each of them, in what measure the notion of neutrality remains compatible with its mechanism, in what measure the member States can, and even, in certain circumstances, must adopt a consistent attitude. His conclusion is that the Covenant has not abolished neutrality, but the traditional conception of neutrality, which implied absolute impartiality. He sees in the post-war system a return to “qualified neutrality,” which, as he shows, has a long history behind it.

The study of M. Paul de la Pradelle (*Evolution of Neutrality* — French Memorandum No 5)<sup>3</sup> tallies with that of Dr Lauterpacht in many points, and confirms it. Examining the place which neutrality occupies in the system of the Covenant of the League of Nations and in that

<sup>1</sup> See below, p 476

<sup>2</sup> See below, p 412

<sup>3</sup> See below, p 404



of the Briand Kellogg Pact, M. de la Pradelle observes that at present, neutrality still exists, but that the regime, in the form in which the Hague Conference of 1907 had defined it, is obsolete. Qualified neutrality " says Dr Lauterpacht. M. de la Pradelle uses other terms, but terms which express the same idea he speaks of a relative, benevolent, attenuated, differential or partial " neutrality. This conception has not yet taken a very clearcut form. It is still in the formative period. Two currents of thought are contributing to its working out on the one hand, the interpretation of the Covenant of the League of Nations which tends to diminish its scope and on the other hand, the movement which tends to strengthen the Pact of Paris. M. de la Pradelle is inclined to believe that these two tendencies may end, in the near future, by setting up a system in which neutrality will cease to be a policy of indifference and become a sanction in international law "

Professor Schindler also has sent us a memorandum on *The Notion of Neutrality in a System including Repression of Resort to War*<sup>1</sup> in which is found a series of observations along the same lines as those of the two last mentioned memoranda. Considering the problem first of all in general and from a sociological viewpoint, Professor Schindler calls our attention especially to the fact that collective security in the international order cannot be modelled exactly on collective security within a State. The State, " he says, requires of the individual in case of need the sacrifice of his life in the interest of the community. In this case individual security is strictly subordinated to collective security. Not so in the international field. Here collective security is the counter part of individual security and cannot be in opposition to it. The collectivity cannot require a State to sacrifice itself completely in the interest of the collectivity " The conclusion follows that the obligation to co-operate in inflicting sanctions has its limits and that a system of repression of recourse to war cannot impose identical obligations upon all, but must take account of the geographical situation and of the special conditions of each State. These conditions adds M. Schindler may be such that it is necessary for a State to remain neutral even during a common action against an aggressor not only in order to protect the essential interests of that State, but for the common welfare as well. The example of Switzerland seems to him an illustration of this truth.

Finally the report of Professor Jessup (*International Security*)<sup>2</sup> examines in detail and analyses with great clearness the question of neutrality from the point of view of the United States. It observes in the first place that the policy of neutrality is firmly rooted in American thought and practice. The American people are inclined to consider it as a traditional American doctrine of the same sort as the Monroe Doctrine "

<sup>1</sup> See below p. 419

<sup>2</sup> See below p. 100



Recalling the declaration made in May, 1933, at the Disarmament Conference, by Mr Norman Davis, according to which the United States might, in case of war, facilitate the application of the sanctions which the Members of the League of Nations might invoke against the aggressor, by withdrawing its protection from American citizens furnishing supplies to the latter, on condition that the Washington Government recognise in the country in question the violator of the Kellogg Pact, — Dr Jessup attempts to specify what might be the significance of this new position and how it might be given a legal basis. In his opinion, agreement might be considered on the following bases: (a) if the members of the League of Nations are unanimous in designating the aggressor, and if the United States shares their opinion, withdrawal of Government protection from American citizens furnishing supplies to the aggressor, (b) if the members of the League of Nations are unanimous, but the United States does not share their view, embargo on cargoes intended for *both belligerents*. Dr Jessup believes that a formal and general agreement would be necessary so that it might be quite certain, from the legal point of view, that the State, which, while applying certain sanctions, does not fully participate in the conflict, does not lose the benefit of its neutrality. On the other hand, he draws our attention to the fact that, hitherto, the American Senate has always been hostile to embargo measures not affecting both belligerents but implying a discrimination between the " guilty party " and the " victim ". Finally, he believes that any general convention concerning neutrality should lay down the principle of the solidarity of neutrals, as it is specified in the Argentine Pact for the prevention of war.

With a view to facilitating the discussion to which the problem of neutrality will give rise, it seems to me worth while to draw the attention of the Members of the Conference to the following points, which arise out of our documentation

(1) Is the notion of neutrality essentially bound up with the system of absolute abstention and impartiality as embodied notably in the Hague Convention of 1907?

(2) Is there not a distinction to be established, from this point of view, between sanctions involving participation in war and those which, by their nature, permit the State applying them to keep out of the hostilities? Can a sufficiently elastic sense be given the notion of neutrality to make it compatible with this second category of sanctions?

(3) Would it not be proper to establish a further distinction between *active* participation in sanctions and *passive* collaboration, the latter having as object to facilitate the application of measures without taking part in their execution? How could this passive collaboration be organized so as not to deprive of the advantages of neutrality the States which have undertaken it?



*Measures of Mutual Assistance and Sanctions*

This question is the subject of a study particularly complete and of the greatest interest, due to the Chatham House Group (United Kingdom Memorandum No. 1).<sup>1</sup> The first part is taken up with an historical sketch of the practice of international sanctions from the end of the Napoleonic wars to the World War. The second part contains a systematic and critical examination of the different kinds of sanctions to which recourse might be had in international relations. After noting that, while public opinion constitutes a force which is by no means negligible, its action is nevertheless insufficient, and that moral sanctions based on public opinion must be supported by material sanctions, the Memorandum passes in review (1) diplomatic sanctions (Chapter III) — (2) financial sanctions (Chapter IV) — (3) the embargo on war materials (Chapter V), — (4) the embargo on raw materials necessary to the manufacture of arms and munitions (Chapter VI), — (5) the international boycott (Chapter VII) — (6) military sanctions (Chapters VIII and IX).

For each category of sanctions the authors analyse carefully and in a perfectly objective spirit the conditions necessary if the measure is to be effective the limits of this effectiveness and the repercussions which its application may have on the situation of the States applying it. The elements for judgment with which we are thus supplied and which constitute a particularly rich documentation, serve as the basis for general conclusions which may be summed up as follows:

(1) The only economic sanction universally effective is the complete boycott, which includes all the other economic sanctions.

(2) This sanction provokes reactions at the expense of those who apply it. It may lead them into military operations.

(3) Applied by all States it is effective but its effect may not be immediate.

(4) On the other hand, a premeditated aggression may cause so serious an injury to the State which is the victim of the aggression that, in the absence of military sanctions the nations will not have enough confidence in the collective system of security to play their part in it loyally.

(5) Military sanctions if they are to serve their purpose must be applied immediately.

(6) The organization of these sanctions meets with such difficulties in the present state of affairs that it can hardly be thought of otherwise than on the basis of regional pacts.

The problem of economic sanctions is the subject either principal or accessory of still other memoranda. We may mention in particular in Canadian Memorandum No. 1 the two monographs of Mr Mackay *The Military Effectiveness of Economic Sanctions*<sup>2</sup> and of

<sup>1</sup> See below p. 358

<sup>2</sup> See below p. 359



Mr Wallace, *The Use of Key Minerals for the Preservation of Peace*,<sup>1</sup> — the study of M Francis Delaisi, *The Difficulty of Applying Economic Sanctions* (New Commonwealth Institute, Memorandum No 21),<sup>2</sup> — that of Mr Millward on *The Rôle of Peaceful Pressure in a Collective System*<sup>3</sup> (New Commonwealth Institute, Memorandum No 20), — that of M Jean Naudin on *Financial and Economic Assistance and Sanctions in case of International Conflicts* (French Memorandum No 2),<sup>4</sup> — that of Professor Richardson (Memorandum No 1 of the Geneva School of International Studies)<sup>5</sup>

The majority of these authors agree with the group of the Royal Institute of International Affairs in noting the difficulties in the way of applying economic sanctions and, in some cases, their lack of effectiveness. Some of them, M Delaisi for example, hold that it is impossible to undertake economic sanctions without the support of an armed force ready to intervene, and that it is, consequently, an illusion to imagine that economic sanctions are peaceful means.

Military sanctions thus take on a particular importance and the question arises as to how their organization can be conceived.

In this connection, two principal schools of thought appear — one tending toward the creation of an "international force", the other leaving to the States the application of military measures, subject to the possibility of a more or less developed co-ordination.

As to the possibility of organizing an "international force," opinions are divided. Several memoranda pronounce in the negative. In particular, the study of the Chatham House Group contains an exposition of the arguments which can be invoked against this system (Part II, Chapter VIII). Similarly, Professors McNair (United Kingdom Memorandum No 3)<sup>6</sup> and Richardson (Geneva School of International Studies, Memorandum No 1)<sup>7</sup> consider that the organization of an international force destined to ensure the repression of recourse to war, raises problems which are practically insoluble under present conditions.

Such is not the opinion expressed in the numerous memoranda which the New Commonwealth Institute has submitted on this question.

Professor Hans Wehberg (*Theory and Practice of International Police* — New Commonwealth Institute Memorandum No 13)<sup>8</sup> studies the various functions which an international police can exercise, — as administrative police, or to enforce the rules of the law of war, or to ensure the execution of arbitral sentences, or, finally, to re-establish peace or to preserve it in case of threat of war.

Mr Capper-Johnson (*The Relations between Disarmament and the Establishment of an International Police Force*, — New Commonwealth Institute Memorandum No 9)<sup>9</sup> expresses himself clearly in favour of

<sup>1</sup> See below, p 340

<sup>4</sup> See below, p 348

<sup>7</sup> See below, p 252

<sup>2</sup> See below, p 487

<sup>5</sup> See below, p 252

<sup>8</sup> See below, p 484

<sup>3</sup> See below, p 487

<sup>6</sup> See below, p 357

<sup>9</sup> See below, p 483



the creation of an international force, which he considers the necessary preliminary to national disarmament. Attacking the problem as a whole from the organic viewpoint, he examines successively the advantages and the defects of the various schemes which have been proposed the Tardieu plan of February 5 1932 the plan presented by the New Commonwealth Institute at the International Congress for the Defence of the Peace, held at Brussels in February 1934 the plan of Admiral Lawson the plan of Pierre Cot, etc.

Memorandum No 14 of the New Commonwealth Institute sets forth, under the signature of Admiral Lawson,<sup>1</sup> the author's conceptions concerning the creation of an aviation service for Europe.

Admiral Hopwood (Memorandum No 15 of the New Commonwealth Institute)<sup>2</sup> sums up his project for the creation of a maritime police

M. Van der Leuw (New Commonwealth Institute Memorandum No 16)<sup>3</sup> defends in his turn the idea of an international force.

General Sir F. Maurice (New Commonwealth Institute, Memorandum No 17)<sup>4</sup> is of the opinion that the difficulties of the problem arise rather from national prejudices than from technical considerations. He believes that the new experiment should be begun by the creation, on a European basis of an air police, and he sets forth on this subject, the main outlines of a concrete plan.

Mr Greaves (New Commonwealth Institute Memorandum No 18)<sup>5</sup> discusses especially the conditions under which the international force would have to be controlled.

M. Pierre Cot (New Commonwealth Institute Memorandum No. 19)<sup>6</sup> states the fundamental facts which dominate the problem and which convince him that an air police force would be insufficient unless it were made a part of a larger organization, a veritable international army capable of defending States against all attacks, by land and by sea as well as by air.

Among the other partisans of the creation of an international force may be cited M. Sofronie (Rumanian Memorandum No 2)<sup>7</sup> Mr V. Adams (United Kingdom Memorandum No 3 Part II)<sup>8</sup> M. Georges Scelle (New Commonwealth Institute Memorandum No 2)<sup>9</sup> and Mr Millward (New Commonwealth Institute Memorandum No 20)<sup>10</sup>

As has been noted above the conclusion of the study which the Chatham House Group has made of sanctions points on the one hand to the insufficiency of economic sanctions especially in face of a premeditated aggression and on the other hand, to the practical impossibility of organizing effectual military sanctions under present conditions otherwise than on the basis of regional pacts.

<sup>1</sup> See below p. 483.

<sup>2</sup> See below p. 486.

<sup>3</sup> See below p. 481.

<sup>4</sup> See below p. 486.

<sup>5</sup> See below p. 487.

<sup>6</sup> See below p. 488.

<sup>7</sup> See below p. 487.

See below p. 486.

See below p. 487.

See below p. 487.



The same opinion is expressed by Professors McNair (United Kingdom Memorandum No 3),<sup>1</sup> Richardson (Geneva School of International Studies, Memorandum No 1)<sup>2</sup> and Meitani (*Mutual Assistance, Sanctions and Regional Agreements* — Rumanian Memorandum No 7)<sup>3</sup>

In Czechoslovak Memorandum No 2 (*The Little Entente and Collective Security*),<sup>4</sup> Professor Michel Zimmermann analyses a practical application of the system of regional agreements and shows us how the essential questions raised by the problem of Collective Security find their solution in the institution of the Little Entente.

The same author, in another Memorandum (*Treaties in force on the Problem of Collective Security* — Czechoslovak Memorandum No 1),<sup>5</sup> makes a systematic study of the different kinds of treaties which can be concluded with security as their aim. He classifies them according to their form (bilateral or collective) as well as according to their content (non-aggression, definition of aggression, mutual assistance). As regards regional pacts of mutual assistance, M. Zimmermann points out that the application of measures of coercion can be provided for in two different ways: in the one case, these measures are applicable only within the limited group of States governed by the treaty (such is the system of the Locarno Rhine Pact), in the other case, the measures may be envisaged against other States, aggressors outside the group of signatories (the system in force, for example, in the Little Entente and the Balkan Entente). *De lege ferenda*, the author considers the former plan as the better.

In Polish Memorandum No 4 (*Non-aggression Pacts and the Covenant of the League of Nations*),<sup>6</sup> Professor Antoni Deryng shows the diversity of the objects to which limited agreements can be adapted: peaceful settlement of disputes, non-aggression, assistance, economic or cultural rapprochement. He shows a preference for bilateral pacts, which can, by dealing with more specific conditions, formulate obligations which are more concrete and easier to define.

If the practice of regional pacts has its partisans, it does not fail to arouse apprehensions in certain quarters.

Mr Gathorne-Hardy (*The Obstacles to Collective Security* — United Kingdom Memorandum No 3),<sup>7</sup> issues a warning against the dangers which they present. The special interests upon which these pacts are based do not necessarily coincide, he says, with the general interest in maintaining peace.

Similarly, Professor Ferrari dalle Spade (*Historical and legal considerations on unsuccessful past attempts towards Collective Security* — Italian Memorandum No 3)<sup>8</sup> fears the rebirth, under cover of this formula, of veritable military alliances, having but little in common with the

<sup>1</sup> See below, p 357

<sup>2</sup> See below, p 252

<sup>3</sup> See below, p 380

<sup>4</sup> See below, p 346

<sup>5</sup> See below, p 345

<sup>6</sup> See below, p 373

<sup>7</sup> See below, p 354

<sup>8</sup> See below, p 472



regional ententes contemplated by Article XXI of the Covenant of the League of Nations and capable of dealing a severe blow to the collective system

There is here an important point to consider. Is it possible to remove this danger?

Such is the question raised especially by Mr Hodson (*Regional Security and the World Collective System* — United Kingdom Memorandum No 3),<sup>1</sup> who enumerates a certain number of rules to be observed in order to ensure harmony between the regional agreements and the world system of which they should form a part.

Professor Richardson (Geneva School of International Studies Memorandum No 1)<sup>2</sup> also stresses the connections which should be established between the working of the regional pacts and the general mechanism of Collective Security.

I do not know whether I ought to apologise for the length of this report or for its omissions. Several memoranda, briefly mentioned, merit detailed analysis and in order not to make this introductory summary excessively long, I have had to resist my personal inclinations. The harvest of ideas, observations, arguments and suggestions which our documentation constitutes is an abundant one. It has been necessary to sacrifice certain elements in order to give sufficient prominence to the essential points, to which our coming discussion can most profitably be directed.

This discussion has its outlines marked out by the decisions of the Preparatory Conference. None of the questions placed on the agenda should be neglected but there are some which we shall no doubt be able to treat rapidly while others will require our attention for a longer time. By summing up the memoranda which we have received, the present report makes it possible to foresee already at which points on our path we shall be led to pause.

Whatever may be the length of time, however that we devote to this or that aspect of the problem, the essential thing is that our exchange of views should take place on the plane which is appropriate to such a meeting as ours.

The International Studies Conference should maintain a scientific character — which it would lose if we allowed ourselves to be led to consider the problem as politicians urged on by the requirements of day-to-day action, are obliged to do. What constitutes the value of our effort and what justifies it is precisely the fact that without being dominated by these considerations we can give expression to the aspirations of enlightened public opinion.

On the other hand, the subject upon which we discourse would hardly lend itself to a theoretical treatment favourable perhaps to the flights of the imagination, but blind to the realities which surround us.

In order to remain true to our task we must avoid these two dangers

<sup>1</sup> See below p. 311

<sup>2</sup> See below p. 311



*A certain number of memoranda were received by the Conference after the report of Professor BOURQUIN was prepared*

*These memoranda, five in number, are as follows, listed in the order in which they were received*

A Norwegian memorandum, by M RAESTAD<sup>1</sup> on the problem of Collective Security in General, three Polish memoranda, bearing the numbers indicated below : No 6, memorandum by M MAKOWSKI<sup>2</sup> on peaceful methods of settlement of international legal conflicts, No. 7, memorandum by M GRZYBOWSKI,<sup>3</sup> on the internationalisation of civil aviation, considered from the standpoint of Collective Security, No 8, memorandum by M KOMARNICKI,<sup>4</sup> on the definition of the aggressor, finally, a Spanish memorandum No 1, by M GASCON Y MARIN and M CORTINA MAURI,<sup>5</sup> on the peaceful settlement of international conflicts

*The reader will find, printed as an appendix (p 469) a full list of the memoranda, studies and reports submitted to the 1934 and 1935 Conferences on Collective Security, together with all relevant bibliographical information.*

<sup>1</sup> See below, p 150

<sup>2</sup> See below, p 229

<sup>3</sup> See below, p 285.

<sup>4</sup> See below, p 313

<sup>5</sup> See below, p 241



## ADDRESSES DELIVERED AT THE INAUGURAL MEETING

*The Eighth International Studies Conference and General Study Conference on Collective Security* was opened on Monday morning, June 3, 1934, at the London School of Economics and Political Science by the LORD MESTON K. C. S. L., LL. D., *Chairman of the British Co-ordinating Committee for International Studies* who was accompanied by the VISCOUNT ASTOR, *Acting-Chairman of the Council of the Royal Institute of International Affairs*; SIR WILLIAM BEVERIDGE, K. C. B. M. A. B. C. L., D. Sc. (Econ.) LL. D., *Director of the London School of Economics and Political Science*; M. HENRI BONNET *Director of the International Institute of Intellectual Co-operation*; PROFESSOR MAURICE BOURQUIN *of the Graduate Institute of International Studies and the University of Geneva*; General *Rapporteur of the Study Conference on "Collective Security"* the RIGHT HON. SIR AUSTEN CHAMBERLAIN K. G., M. P. MR. ALLEN W. DULLES, *Chairman of the American Committee on "Collective Security"* appointed by the Council on Foreign Relations New York, *Chairman of the Conference's Study Meetings on "Collective Security"*; PROFESSOR LOUIS EISENHARTEN *of the Sorbonne Paris*; *Chairman of the Conference's Executive Committee* and PROFESSOR GILBERT MURRAY *President of the International Committee on Intellectual Co-operation.*

SIR AUSTEN CHAMBERLAIN delivered the following address

I have been asked on behalf of your British hosts to extend to all our visitors a most hearty welcome to our metropolitan city. You are gathered here under the ultimate auspices of the League of Nations to study the question of Collective Security. I do not know how it may be in other lands but I think it is certainly true of this country that at no time in its history has so wide a public taken a constant and even an anxious interest in foreign affairs and among the questions of foreign policy which most preoccupy us is this same question of security.

We need some modern alchemist who will transmute the fears and suspicions which gather around us into that sense of fellowship and security for which the world is longing but which it seems unable to attain.

How many minds, in how many different countries, are preoccupied with this problem is illustrated by the papers that have been prepared for this discussion. I must frankly confess that I have not read them all, but one obtains an idea of the extent of the study of the difficulties which surround it and the passion with which it is pursued from the admirable summary of those papers which has been made available to us by your Rapporteur.<sup>1</sup>

Ladies and Gentlemen I often ask myself whether since the Great War we have not sometimes lost the substance in grasping at a shadow whether in the pursuit of our ideals we have not let slip opportunities of realising some advance and whether indeed in this question as in so many the French proverb is not true which says *Le mieux est l'ennemi du bien*.<sup>2</sup>

At the close of that gigantic struggle as often before in the world's history on similar occasions the thoughts of men—horrified at their

<sup>1</sup> See above p. 3



own actions and their results — sought to find some security against a repetition of the disasters which they had lived through and experienced

The League of Nations was not the first effort in the world's history to find some power of sufficient physical force, but still more of sufficient moral grandeur, to overawe the passions of nations and to preserve the law of Europe. Other efforts, earlier efforts, sometimes never came to fruition, sometimes endured for a time and then passed away, and, warned by their example and confronted with the present unrest, we may well ask ourselves whether the great international effort embodied in the League of Nations is to have the same fate, or whether it is to survive and gradually to grow in strength and authority, and in time to banish this evil from our midst, or at least and at an earlier date enormously to reduce the possibilities of a new outbreak

For my part, Ladies and Gentlemen, whatever be the fluctuating fortunes of the League, whether at this moment it commands more or less adherence and respect, I know no substitute for it. I know no other method of treating these international differences which offers the same hope, and I am convinced that the need for such an institution is so great that it will survive its infantile illnesses and present malaise, and that it will gradually, very gradually, play a greater part in preserving peace and removing causes of difference

It was the old Emperor William himself, so writes Professor Mowatt in his volume on the Concert of Europe, it was the old Emperor William I himself who had written on the margin of an official article which recommended a preventive war "In order to wage a successful war, it is necessary that the attacker have the sympathy of all high-minded men and countries on his side." And I believe that the force of public opinion, apart from any physical sanctions, will play an ever larger part in the world's history and will require ever closer attention and more respect from those who conduct the government of their respective countries

The League — who can doubt it? — as it stands to-day, with all its imperfections and with some failures, is yet a potent instrument for the avoidance of war and the settlement of international differences. I ventured not very long ago in our own House of Commons to say that wars can be divided roughly into two classes "one for which I found no better name than the accidental war, the other the deliberate war"

By the accidental war I mean wars arising without premeditation, without the desire for war on the part of anyone, out of some question which suddenly brings passions to boiling point, which affects, or is thought to affect, the national honour, or out of some imbroglio into which nations have been led, not knowing what they did, and from which they see no possibility of extracting themselves without a loss of honour and repute



In all such cases the League is an invaluable instrument for preserving peace at the present time. It gains time for passions to cool. It brings a larger and more unbiassed public opinion to bear upon the problem. And it must be added, the parties to such disputes can often make a concession to the League which they would find it impossible to make to the other disputant with whom they are engaged.

It is not that kind of war which if I understand your minds rightly preoccupies you to-day when you open a Conference on Collective Security. What you have in mind is something much graver, much more difficult to cope with—the effort by some country to impose its will upon an unwilling world. No doubt even such a country does not desire war, but it desires above all, and it means to have, its own way, even though it be at the cost of war.

It is that kind of case which you are met to consider to-day.

Each of us must form his own opinion of what are the proper remedies. Each of us can only make a personal contribution, perhaps a very small one, to the consideration of the subject. But though I think that the existence of the League of Nations, and the public opinion which it creates, and the moral judgment which it can form, will act as a serious deterrent event to that kind of war, I do not think that they will alone suffice to prevent such a war.

In those cases, as it seems to me, nothing but the certainty, or at least the high probability that deliberate aggression of that kind will mass against the aggressor forces which he cannot hope to overcome, will restrain him and prevent him from proceeding to the ultimate resort of war.

The original idea of the League was to bring all the nations of the world into one common system of mutual guarantee. I earnestly hope that the League will maintain its world-wide character, and even extend it by the re-entry of Powers which have left, or the addition of new ones, but I do not think that we shall find the kind of security which we need against the dangers of which I have been speaking in guarantees which are equally binding for every war, wherever, however, and on what subject whatsoever it may arise.

For obligations so widely spread, so universal, and yet requiring—potentially at least—such immense sacrifices from the nations which undertake them, are I think beyond the strength of humanity and call for sacrifices that the peoples of the world will not make until the whole outlook of the world has changed.

I therefore incline, as some of those who have contributed papers for the consideration of your Conference do, as the statesmen of the world, if we may judge by the events of the last year or two, are increasingly coming to do also, to those regional agreements which concentrate the obligations of each country more narrowly in an area where it at once feels that no disturbance of the peace can take place without its own security being in danger. I feel that the remedy lies rather in



such local agreements, always working within the scope of the League and in accordance with the Covenant of the League

Though these agreements are difficult to accomplish, though there are objections which can readily be raised to them, though in certain circumstances, and if particular Powers abstain from entering their regional groups, it is almost inevitable that these local agreements should seem to be directed against the Power that so abstains, yet be it remembered that abstention is a voluntary act, and that at any moment it is possible for the Power which feels itself menaced to join in the insurance and to acquire for itself all the guarantees and all the rights which the other members of the Group have agreed to secure to one another

Be that as it may, as I told you, I put this forward only as a personal view and because I think, at any rate at this stage of the world's history and of the growth of the League of Nations, more modest plans than those originally contemplated are most likely to achieve success and to lay the foundations for further progress. It is on some such schemes as those that I place my faith

That faith in the League, I repeat, is deep-rooted. When it was first formed, I, who hope I am not insensible to ideals, but who even when I am grasping after them, like to feel my feet firmly planted on Mother Earth, thought the League was a beautiful dream but hardly a practical reality

A few years later it was my fate, perhaps I should say my good fortune, to represent my country for nearly five years at the meetings of the Council and at the gatherings of the Assembly. The faith which I now express in the League is the result of no theory, but of my observation of its practical working and what I saw achieved in the years in which I participated in its deliberations

Ladies and Gentlemen, I must now invite others, more competent than myself, to develop the theme which you are going to discuss. Your Rapporteur has put before you already a wealth of material. I pray that out of your deliberations may arise a greater unity and a wider understanding among the nations which are here represented

Professor EISENMANN then spoke as follows <sup>1</sup>

The subject with which we are dealing at this year's Studies Conference is particularly topical, indeed I may say it is burning. It is only natural that the idea of security should be foremost in every mind in this world which is still full of the traces of the greatest and most terrible of all wars, which hoped and believed that it would be the last and which now fears that it is on the eve of a fresh conflict—perhaps less vast but more terrible in view of the perfecting of war technique. There can be no other Security than Collective Security, if one nation is to be really secure, all must have Security. A threat to one is a threat to all!

<sup>1</sup> Translation



Our Studies Conference is going to promote a clear statement and a detailed discussion of the essential aspects of the problem—to-day one of the most serious and urgent in the world. If statesmen are to arrive at a conclusion, it is the task of men of learning to carry out the preliminary work and to do it well. We must pay a tribute to the institutions which are members of this conference for the way in which they have set about their tasks. In two years of assiduous work they have collected a series of memoranda on this subject of Collective Security which, by their quality as well as by their quantity represent an imposing labour. The best jurists in the greatest countries have lent their co-operation as collaborators or as directors of studies in this collective work. Historians, philosophers and economists have played their part, so proving the extent, the complexity and the capital importance of the problem.

In a constructive and most lucid general Report,<sup>1</sup> one of these specialists particularly qualified to deal with the subject has set out the main points of the topic with which our discussions are from to-morrow going to deal. We shall not draw up resolutions or even recommendations: we are not a deliberative body but a scientific gathering in which opinions are to be exchanged in all freedom. At the end of the Session each of us will be free to retain his view but as has often been proved before, each of us will leave the richer and the better grounded, thanks to the discussions to which we have listened or in which we have taken part. We know too that such discussions often bring about a better understanding between us—an understanding which in itself is a measure of rapprochement.

Rapprochement through mutual understanding is the basis of all study of what our English friends call international relations—what we in France call "international politics," using the word politics in its widest, strongest and etymological sense.

Our task is to bring about an understanding between representatives of different national traditions: we differ in our very modes of thought—modes which we are slow to modify though this comes more easily with the spoken word than with the ideas themselves. We are also seeking a better understanding between representatives of different schools of learning—of different faculties as academic language has it. The contacts established at our Conference are valuable to all both in the preparatory meetings and in the Session itself: meetings take place between jurists, sociologists, economists, philosophers, historians, geographers, engineers and politicians (the list is long but it is not exhaustive) and we hope that our studies will soon lead to the convening of ethnologists and biologists. To my mind the very type of our meetings shows the lines along which education in international relations should take place.

<sup>1</sup> See A. C. P. 3.







question on which opinion has more than once clashed at the time of our meetings. In the innocent guise of an academic dispute the problem in fact goes to the very heart of the question of international relations and of the method by which we are to deal with it. In plain terms, it raises the whole question as to whether international relations or as we Frenchmen call it, international politics, can be set up as an independent school of study standing alone as does a national school of literature or geography. Speaking in still more scholastic terms, is there a place in university education for a Faculty or School of International Relations which will be self sufficient, exercising a sort of monopoly? Receiving its students straight from school, will it be able to train them in cloistered seclusion? Here again the honour of calling upon me to speak on behalf of all of you demands that I should show every discretion. I may perhaps be permitted to say—purely as my personal opinion—that it is to me difficult to conceive of and organise international relations in the abstract. The existence of nations is a reality—an historic fact so also is their development towards greater solidarity greater concord and closer human relations. These are two inseparable terms and the task of all who in their studies or in their actions contribute to the promotion of the relations between nations is to reconcile these two terms and to establish a just balance between them. It is this task to which our Conference is going to devote its work studying in the serene atmosphere of science, doubly inspired by national patriotism and by a conception of the brotherhood of mankind.

Lastly Mr ALLEN W DULLES delivered the following address

The subject for the present Studies Conference was selected just two years ago. At that time we were on the eve of the World Economic Conference, and the Disarmament Conference following the initiative taken by the Prime Minister of this country in presenting the Draft Disarmament Convention, had entered a stage of its work which held out real hopes of concrete results. Even under such conditions our subject "Collective Security" was at best an ambitious one. The last two years have brought many changes and with them some elements of discouragement. The attempt to obtain concerted international action against economic and political nationalism through the reduction of trade barriers and armaments has so far failed, and the Conference method of dealing with such subjects has somewhat fallen into disrepute rightly so I believe where the advance preparation is not carried to a point which almost ensures success.

The world at large and in particular I believe the United States rightly or wrongly is becoming more and more convinced that the old world forces of power politics of military and political alliances are taking the place of the collective system as previously conceived.







In fact, the most striking development of the past fifteen years and what distinguishes this period more definitely than any other development from past periods of history is the determined and continuing effort to secure concerted action to preserve the peace—action taken not only by the Powers directly involved but also by other Powers due to the growing realisation that the preservation of peace is itself a matter of vital concern to all. There have, of course, been collective systems in the past but the purpose of these systems was not primarily to preserve the peace, but rather to protect the *status quo* or some particular arrangements between a group of States in which only a part of the world was interested. These arrangements failed as soon as interests shifted or the power of the guaranteeing parties waned.

If we could assure to ourselves a few decades without any serious disturbance to world peace within which to develop further the existing peace machinery to test it out to prove its worth and analyse and correct its shortcomings in minor emergencies this machinery might easily prove its strength in the face of a major crisis. There is a real danger that we will not have the time for such leisurely preparation. Events so often move more rapidly than the work of preparation to deal with them. I admit that the nearer one gets to Europe from America for example, the less one is impressed with the idea that there is any danger of an early war though a great many of my compatriots viewing the situation from a distance believe that this danger is very acute. At the same time, one must recognise that forces are at work which may eventually lead to war and that the counteracting forces for the organisation of peace have not kept pace.

I would illustrate this by my experience at the Disarmament Conference where during the past three years I have spent as have Professor Bourquin and others here, many long months. The impression I brought away was not one of lack of agreement on the fundamentals but rather of bad timing. Concrete proposals that might well have proved acceptable a few months before they were proposed, have been presented when public opinion and national aspirations have moved forward to more advanced positions. It has seemed like a perpetual stern chase."

We are faced with the same difficulty in dealing with the problem of Collective Security. It is not only vital to build up our substitute for war but we must build it up in time.

In most of the memoranda which have been prepared for the Studies Conference there is little difference of view on the point that it is impossible to stabilise history—at least it has never been done in the past. We are in a world of change and even if a perfect international settlement of any situation could be brought about whether by treaty of peace or otherwise, it would only be a question of time before that settlement became in part at least obsolete. We tacitly recognise this situation but we have never in the past dealt with it as a general principle although



there have been many isolated examples of peaceful change. The reason for this is possibly not far to seek. During the early history of the race, war was the obvious and the convenient way of registering the important changes affecting the relations between nations. I have even said "convenient," because it was then possible to effect these changes through war with relatively little disturbance to the forward progress of civilisation. In fact, in ancient days there was a good deal to be said for the view that war brought out the nobler side of human nature. There was no particular reason to go far in seeking a substitute for war.

It is here that the last decades have wrought a complete change, to-day war is a luxury we can no longer afford and if it is only through war that we can find the safety valve to effect the adjustments required by an ever changing world, our situation is indeed critical.

It is quite natural that both the immediacy of the problem here in Europe and the composition of the Studies Conference should result in our considering Collective Security very largely from a European viewpoint. In any study such as ours, as in the exact sciences, one naturally attacks the problem where it presents its most complicated and acute features. Under these conditions it would be presumptuous for me, as an American, to attempt to suggest how the Conference should approach the study of the problem and as presiding officer at the coming meetings my task will be to see that every opportunity is given for the presentation of all points of view which may help to clarify the subject.

It is necessary, however, to be selective in dealing with the broad Agenda before us in view of the limited time available. I have found that it is the consensus of opinion of those with whom I have discussed the matter that the subject should be dealt with in plenary sessions rather than in divided groups, and that after a preliminary consideration of the general conception of Collective Security we should proceed promptly to the main subject on the Agenda, the prevention of war. This subject would include an interchange of views on the closely related question of the amicable adjustment of situations which might threaten the peace. Following this, it is proposed to consider the course of action to meet situations where war has broken out, including a definition of the aggressor, sanctions and regional agreements and, finally, neutrality.

In our approach to these subjects we should attempt to do something more than indicate varying national viewpoints, although it is natural that these viewpoints should very definitely affect our attitude and the suggestions we may have to make. From the American viewpoint, for example, it is quite futile to suggest that the United States should approach the question of Collective Security as a matter in which we should interest ourselves out of a feeling of duty to others. The apprehension that this is being asked of us, that our aid is sought to



help maintain a particular *status quo* rather than to maintain the peace is very present in American public opinion. It is one of the reasons for our reaction towards what many of my compatriots like to believe is a more complete isolation from European problems. This tendency is growing with us as the scene in Europe seems to us to become more and more complicated. The motives which drew us into the World War the steps leading up to our declaration of war in 1917 are being analysed and our neutrality policy is under scrutiny with a view to finding out how we became involved and as many people would put it, what mistakes of policy or procedure we made which resulted in our joining the war and how we can avoid such so-called mistakes in future.

These searchings of mind are quite understandable if one looks upon American participation in the last war as having been in aid of others, that is to say a kind of crusade to benefit the world at large. The idea that we acted primarily from such motives is erroneous. In 1917, the American Government viewed intervention in the War as vital to the protection of our own interests, although sentiment played a large part in the popular response. Our contribution in the future to any scheme of Collective Security and the same is true for any other nation, can properly be predicated only upon what a nation conceives to be an enlightened view of its own best interest. And here is where a campaign for the education of public opinion is necessary. We all realise the cost if we ourselves become involved in war but public opinion in our respective countries and particularly in the United States is not sufficiently convinced that national interest and possibly national safety may depend upon keeping other people from going to war. If it were demonstrable that any country could adequately and finally protect its own interests by remaining completely aloof from any system of Collective Security such a nation could not be expected to contribute to the collective system. I believe however that even in the case of a country as fortunately situated as the United States it is unlikely that we can be more successful in the future than we have been in the past in remaining outside and unaffected by any world catastrophe. It is from this point of view that an American citizen can and should realistically approach the question of Collective Security, namely that we should have a part in the system not because of our interest in other nations or even because of our interest in the preservation of world peace in the abstract but because any disturbance to the peace is of vital concern to us.

Participation in a programme for Collective Security is a form of insurance. The nature of the participation may vary according to the respective needs and positions of different countries. Each country must decide the method of taking out this insurance and the amount of its contribution, but no country can safely disregard the problem or find salvation in isolation.



PART II

EXTRACTS FROM THE MEMORANDA  
AND  
FROM THE DISCUSSION







## CHAPTER I

# SOME OPINIONS ON COLLECTIVE SECURITY







# CANADA

(Canadian Institute of International Affairs)

## I CANADIAN OPINION ON COLLECTIVE SECURITY

*This memorandum consists of a series of monographs, some of which deal particularly with certain national attitudes towards the problem of Collective Security*

*Such is the case with Professor F H Underhill's study on " Canadian Foreign Policy in the 1930' s " and with that of Mr T W L MacDermott entitled " Canadian Opinion To-day and a Peace Policy "*

*The following are extracts from these two studies*

### CANADIAN FOREIGN POLICY IN THE 1930'S

by F H UNDERHILL

The central interest in Canadian external policy is still the adjustment of our relations with Great Britain. In the struggle between nationalists and imperialists during the post-war decade, the League provided convenient debating points from time to time for both sets of controversialists, but the central topic of the debate was the nature of the British Commonwealth, and the League was always brought in as an after-thought. Nationalists were apt to favour the League because the road to Geneva seemed to offer good chances for leaving London upon a side-track, and imperialists were suspicious of it for the same reason.

Canada's entry into the League was not the sign of any profound international spirit among her people. Membership in the League was welcomed as a proof that we were now accepted among the older nations of the world. Our reasons for going into it were essentially as nationalistic as were the reasons of the United States for staying out of it. Nevertheless we did sincerely believe in the experiment of bringing the nations of the world together to thresh out their differences in public around a table, and we have played our part in that experiment with reasonable good faith. We were naively optimistic about it because war had long been eliminated from the international relations of the North American continent, and, as Professor Lower has remarked, we have been rather too much inclined to regard the League as a kind of society for the propagation of the gospel in foreign parts. Hence the famous Canadian speech which was so often repeated at Geneva about our three thousand miles of undefended frontier. We had never felt the impact of American capitalist imperialism in the form of coercive force as had the Central and South American peoples, and we have never quite realised that because Europe is the centre of great capitalist world-empires, the rivalries between her chief powers cannot be settled so easily as our relations with the United States.



But Canadians have always been clear upon one point, and that is that these European difficulties must be settled by the Europeans. Against all attempts to turn the League machinery from the purpose of a round-table of the nations into that of an international war-office which could summon troops from Canada, every Canadian Government, regardless of party has set its face. Canada, in fact, took the lead in trying to weaken the sanctions side of the League machinery when she proposed the elimination or the amendment of Article 10. And she has steadily refused to ratify all such ingenious efforts to make Geneva the centre of a French security system as were represented by the Draft Treaty of 1923 or the Protocol of 1924.

The idealist assumptions upon which the Wilsonian League was originally based — that while national groups of financiers and industrialists continue to compete fiercely with one another for the opportunities of profit, the national governments which they control can be persuaded to desist from using national armaments as an instrument in this competition — have long since been shown by experience to be groundless. The root criticism of the League centres around this point. Canadians, however whose political thinking is still carried on in an atmosphere of nineteenth-century bourgeois liberalism have not as a rule emancipated themselves from Wilson's liberal illusions. The Wilsonian proposals of the dominant section of the British Labour Party have therefore a superficial appeal to them. But while they may be intrigued by the spectacular futilities of more pacts and declarations and conferences such as those in which Mr Arthur Henderson and Mr Noel Baker will be asking them to participate if a Labour Government comes to power they can be depended upon to make sure that none of the pacts involve real Canadian commitments in Europe.

From the Canadian point of view the League is primarily a European institution. We have always objected to proposals for strengthening it if these proposals take the form of stiffening up its sanctions machinery for the same reason that we have objected to giving blank cheques to the British Foreign Office. Geneva like London is situated in Europe and all blank cheques drawn in its favour will be cashed for European purposes. All proposals of this kind have so far meant in their ultimate effect if not in their intention, that Canada should guarantee her automatic assistance to maintain the Franco-British domination of Europe which has existed since the end of the war. This has been the real purpose that the League has served since it was set up. In the name of preserving peace it has been an instrument for maintaining the position of the victorious Powers in the last war. Peace as an ideal has been indissolubly bound up with the *status quo* as a fact. As the realisation of this spreads in Canada it quite rightly increases our disinclination for further intervention in Europe. However naive we may be as a people no Canadian Government has been so naive as to fail to discern



behind the imposing façade of internationalism at Geneva the hard reality of European power politics

The League has no effective machinery for changing or modifying the Peace Treaty system of 1919. In the absence of such machinery, all attempts to isolate an "aggressor" and all advance arrangements for punishing him are simply methods of building up a preponderance of power against Germany which will make it forever unsafe for her to challenge the artificial French hegemony on the continent. In a dynamic, rapidly changing world the concept of an aggressor State is apt to become simply a device by which satisfied Powers protect themselves from the need of making concessions to dissatisfied Powers. If the League is to operate as a healthy international force in Europe, one would think that there must be a change of emphasis in its activities.

Europe will eventually have to reach a more healthy internal balance than that which exists among her States at present. There is not the slightest reason to believe that we in Canada can assist in this process towards a healthy condition by throwing our weight into one or the other side of the balance. If the European States wish to build up regional systems of security in the meantime, to experiment with international air forces and such things, that is their business. Those are forms of insurance which are of chief interest to the people whose houses are most likely to catch fire. The technical arguments for one form of insurance as against another can best be left to the decision of those who need the insurance.

It is true that Canada has a strong interest in European stability and prosperity. We desire a Europe which enjoys a high and secure standard of living so that it may be a good market for our products. But we ought to have learnt from everything that has happened since 1914 that sending Canadian troops to fight on one side in a European war is no contribution to European stability or prosperity. And it cannot be too often repeated that this is all which any of these fine projects for new pacts in Europe really asks us to do.

We must therefore make it clear to the world, and especially to Great Britain, that the poppies blooming in Flanders fields have no further interest for us. We must fortify ourselves against the allurements of a British war for democracy and freedom and parliamentary institutions, and against the allurements of a League war for peace and international order. And when overseas propagandists combine the two appeals to us by urging us to join in organizing "the Peace World" to which all the British nations already belong, the simplest answer is to thumb our noses at them. Whatever the pretext on which Canadian armed forces may be lured to Europe again, the actual result would be that Canadian workers and farmers would shoot down German workers and farmers, or be shot down by them, in meaningless slaughter. As the late John S. Ewart remarked, we should close our ears to these European blandishments and, like Ulysses and his men, sail past the European



siren our ears stuffed with tax bills. All these European troubles are not worth the bones of a Toronto grenadier

## CANADIAN OPINION TO-DAY AND A PEACE POLICY

by T W L. MACDERMOT

Canada only put on the mantle of autonomy in world affairs a few years ago and is still learning how to adjust the buttons. She has very few students of international law and politics anywhere and fewer still in the political life of the country. As a dozen public men and a dozen newspapers could be found saying at any time, she has no foreign policy in any real sense of the word: no regular Parliamentary discussion on the subject, and no Department of the Administration exclusively devoted to these matters. It is for this reason, — because the Prime Minister and the Minister of External Affairs are by a statute one and the same — that Dean Corbett has succinctly put it that Canada's foreign policy or lack of it has been a diversion of the Premier in his off moments.

The coat that covers Canada in this connection is one of many colours.

The first is that of the British connexion. In one form or another most issues revolve around this cardinal formula. Sometimes it is the British Navy, sometimes the Bank of England, or British investments in Canada, or the British Foreign Office, or British institutions, or Anglo-Saxon domination, that is the core of it, but few respectable, well-financed, or widely supported organizations drift any great distance from the fundamental union of Britain's and Canada's common interest in war and peace.

.. On the other wing are those like the Native Sons of Canada who quite frankly face imperial issues, like a war between Canada and Great Britain, and hold firmly that Canada is an independent country, and that Canada's participation in any war should be governed entirely by Canadian citizens, and not determined by London.

Then from a slightly different angle come those who besides being independent in outlook hold very definite views about the form a peace policy should take. Thus the Socialist Party refuse to support the League, as at present constituted, "or to fight in any war for the League until it has undergone a thorough reorganization."

.. Socialist spokesmen attribute Canada's entry into the last war to British propaganda, and claim that a League war to-day would be simply another capitalist imperialist racket in a clever disguise. And they bluntly plump for isolation. Another war with Britain involved would mean a neutral Canada and the break up of the Empire. Even extremist views of course are put forward by the Communists, who see capitalist and exploitation in every rain drop.

Apart from party programmes there is also a strong group of



lationalists who simply say that no European war is worth the life of a Canadian soldier, and that in such another war "Canada will be purely a spectator"

Amongst the French Canadians the isolationist sentiment is perhaps a little more vague in its form, but it is even stronger. It is an assumption, widely made, that they have no stake in European or British wars, that they wish to live undisturbed and undisturbing in their old home, and that only when the native soil is attacked will they take up arms.

These then are some of the divisions of opinion. They all rest on or are bound up with an aversion to war which is vague, or definite and negative, or definite and positive.

The vague feeling expresses itself in hundreds of sermons, in or out of pulpits, against the monstrosities of war, called by every evil name under the sun.

A smaller body do more than protest in a general way. They attack with word and cartoon the makers of war, they fight contribution to the British Navy because it would add one more debt to our overload, they oppose "British influence" and imperialism, and they fasten on the armament makers and "the ring of international bankers" headed by the Bank of England, which, they say, drives us to war.

Then a group, still smaller, becomes more positive, but it suffers at first from impracticability. A Senator moves to legislate the abolition of all profits, high salaries, inflation and other memories of the last war. Writer after writer says "Get a job, feed the hungry, wipe out unemployment, free all trade, develop brotherly love, and you will have peace." One courageous headmaster, with an eye to psychology, urges the formation of a "League of the White Feather," to line the real pacifists up against war.

And finally, we come to the smallest group—critical, well-informed, studious, and thinking in terms of policy and practical measures. They represent two types of policy, one new, the other old. The new believe that the League system plus the Kellogg Pact contain principles which can be gradually applied in economics and politics to equalise the distribution of wealth and power in the world, and in the meantime, by the use of collective force, economic and political, backing up arbitration and impartial international law, to prevent the total collapse of the skeleton of world order that we have.

This group is necessarily small. But its members are influential and increasingly so. Their resolutions and analyses have influenced Parliament and public men, and in the more general discussion of national organizations of all kinds, there is perceptible a far greater attention to detail and exactitude and realisable plan than before, largely because of the direction of this group.

The other positive and practical body is composed of those who preserve the machinery and ideas of the past. They claim they are



realists and in a sense they are. They are the officials, the Defence Department, those who know what plans are in preparation for imperial defence when the next war comes. They do not appear or speak much in public for obvious reasons. *The Defence Quarterly* reflects their views faithfully.

It will be seen that outside the few thinking and acting people, general opinion is in a state of flux and replete with contradictions.

## II COLLECTIVE SECURITY

*Rapporteur* ALAN B. PLAUNT

*The second part of this Memorandum is especially devoted to the analysis of the Canadian opinion regarding Collective Security. It is reproduced below in extenso.*

### *The Canadian Nation*

Any State's foreign policy is conditioned by its internal situation. A brief examination of Canada's internal structure is therefore necessary before examining Canadian opinion on the collective system.

The Canadian federation is a delicate balancing of the centrifugal and centripetal forces of race, religion, language, 'motherlands,' geography and economics. Of a population of 10,300,000 scattered from Atlantic to Pacific, over half (5,300,000) are of British origin (English, Scottish, Irish, Welsh) and are English-speaking; about four-fifths of them are Protestant. Almost 3,000,000 are French-speaking Roman Catholics. The remainder, some 2,000,000, represent over twenty national or racial groups, many of whom are as yet unassimilated and are foreign-speaking. Another dividing factor is that of geography. Three Maritime Provinces on the Atlantic Coast (Nova Scotia, Prince Edward Island and New Brunswick) constitute one area with an outlook and an interest more largely maritime than the rest of Canada. Central Canada (Ontario and Quebec) constitutes another area the interests of which are strongly industrial. The Prairie Provinces (Alberta, Saskatchewan, and Manitoba) constitute something of a separate area with interests strongly agricultural. Finally there is British Columbia with an outlook on the Pacific. While economic unity is maintained by transcontinental lines of railway, a national system of banking, a single tariff policy and other means, economic interests between these areas at times differ widely. In the domestic or municipal life of the nation, no party and no political leader can afford to neglect these facts. They colour our whole life and make it extremely difficult to speak at any given time of Canadian opinion on matters of purely Canadian concern.

When then it comes to matters of foreign policy, this difficulty is evident in an emphatic form. There is undoubtedly a Canadian rush to







to assist any other part of the British Empire in the event of war Canada has always maintained its constitutional right to determine when the occasion arose, whether to participate and the manner and extent of that participation. It is worth noting also that Canada has not accepted the Locarno Agreements. Furthermore Canada announced in the League Assembly her non-acceptance of the proposed Convention for Financial Assistance to States Victims of Aggression.

On the other hand Canada has supported strongly the provisions of the League for the pacific settlement of international disputes and has adopted along with other British members the optional clause of the Statute of the Permanent Court of International Justice and the General Act. Moreover, Canada accepted without reservation or qualification the Pact of Paris of 1928.

Canadian policy towards the League has thus been one of active support to the League as a means of settling international disputes but steady refusal to commit herself in advance to guarantee assistance to other members.

Of late, Canadian opinion as distinct from State policy towards the League has been disturbed by the trend of events in Europe and in the Far East. The collective system as envisaged in 1918 appears to be far from a reality and a drift towards the pre-war condition of competition in armaments perhaps even of competitive alliances seems to have set in. This turn of events has profoundly disturbed Canadian opinion on the collective system as indeed opinion in every country. It is therefore, the more difficult to estimate Canadian opinion of the collective system since opinion is likely to change with the evidence or lack of evidence of the ability of the system to survive the shocks to which it has been subjected. An attempt is made below to set out different groups or trends of opinion though it must be understood that the classifications are somewhat arbitrary and that opinion is likely to vary with the trend of events. Moreover this report is primarily concerned with opinion on the collective system as it is and as it might be in the near future, rather than with an ideal collective system though it is difficult to keep consistently to this distinction in view of the doubt as to whether any collective system any longer exists.

### *Canada's Political and Geographical Position*

A second factor to be borne in mind is Canada's unique geographical and political position. Canada's position is three-sided (1) she is a North American bastion a neighbour of the United States (2) she is a member of the British Commonwealth of Nations and (3) she is a member of the League. To date she has been able to play her threefold rôle successfully gaining the advantages and taking the potential risks involved in such a policy.

Membership in the British Commonwealth of Nations gives her prestige in the international community. It gives her a *crème de la*



to the drawing power of the United States, and it gives her protection of her trade routes. But it also involves her, to a greater or less extent, in the implications of British foreign policy over which in practice she exercises little influence.

As a North American country she does not feel the need of guarantees of territorial and political integrity felt by certain European countries with exposed frontiers. Her relations with her only near neighbour are of the friendliest character, as witness the unfortified frontier between the two countries. As a neighbour of the United States she gains implicit protection of her shores. At the same time prudence dictates that Canadian policies at Geneva and elsewhere must not conflict seriously with the interests of the United States. For example, the rejection of the Covenant of the League by the United States, combined with the traditional American views on freedom of the seas in war time, undoubtedly strengthened Canada's distrust of Article X of the Covenant and of the Geneva Protocol of 1924.

As a member of the League, Canada has gained all the advantages that membership implies in the way of recognition as an independent nation. At the same time there has always been the possibility that co-operation in the application of sanctions in the event of a crisis might raise difficulties with the United States.

Differences of Canadian opinion on the collective system largely turn on the relative importance attached to these different rôles — North American, British Commonwealth and collective — which Canada is attempting to play.

### *Canadian Opinion*

#### *Group Number One — "Traditional" view*

An important Canadian viewpoint may be described as "traditional". In outlining this view, no attempt is made to interpret the actual position of the Canadian Government to-day. Indeed, since the adjournment of the Disarmament Conference the Government has made no important pronouncements on foreign policy. The interpretation given below is based mainly on an analysis of the actual conduct of our external relations over a period of time, and the views of those who are in essential agreement with the methods and principles on which that conduct has been based.

The "traditional" group is impressed by the three-fold character of Canada's actual position, as a North American State, as a member of the British Commonwealth, and as a member of the League of Nations.

Looking at Canada as a North American State, it is contended that we are influenced by, and to a large extent share, the views and interests of the United States. We are an independent member of the British Commonwealth of Nations, though necessarily involved because of the indivisibility of the Crown, in any major war in which any part



of the Commonwealth is involved — though the extent and nature of our participation is a matter for the Canadian Parliament to decide. We are a member of the League of Nations but are unwilling to support military sanctions because of our geographical remoteness, and because of the attitude of the United States.

The 'traditional' group also seems to believe that our importance in international affairs depends on our Commonwealth connections. Because of them we are in a position to influence British policy to maintain our prestige at Geneva, and to maintain our independence vis à vis the United States. Furthermore, without undertaking any financial obligations, we have the advantage of British protection of our trade routes and United States protection of our shores. Disassociated from the British Commonwealth, we would, according to this school, have little influence, either at Geneva or at Washington, and tend to gravitate into the position of a Protectorate of the United States.

Canada's only sensible policy therefore, is to take no step at Geneva likely to involve the hostility of the United States, to foster the British connection on a co-operative basis, and to endeavour to bring about the co-operation of the United States and Great Britain, or on a more cynical interpretation to play Great Britain off against the United States and vice versa.

This group does not believe that Canada should make a decision in advance as to her position in the event of Great Britain being involved in a major war. She would have little if anything to gain from such a decision, and might lose a great deal. Furthermore, this group claims that any decision to-day to isolate ourselves from the implications of British foreign policy would be just as likely to cause violent internal dissensions as would a choice based on the actual circumstances of an outbreak of war.

In general the members of the traditional school believe that Canada should oppose in the future as in the past all attempts to give the League of Nations any of the attributes of a super State — such as the right to demand that its members take part automatically in applying sanctions against an aggressor.

It should of course be borne in mind that no sharp and enduring line of demarcation separates the traditional from the colonial, the North American or the collectivist schools. They tend to merge into each other at their margins.

#### *Group Number Two — Colonial view*

A small and diminishing minority with a point of view which may be termed colonial still exists in Canada. This group maintains that by ourselves we are an unimportant nation unable to protect ourselves or to command a hearing in world councils. Our importance according to this group depends upon our retaining a



equivocally supporting its policies, which  
United Kingdom

of the Canadian reports prepared for the  
lations Conference illustrates this view

which must at almost any cost be maintained —  
wer for good in the world that it would threaten  
it be endangered or weakened by our deliberately  
that of Great Britain on any major issue ”  
it follows that except when we have direct sources  
and support British policy, and when we have  
these should be urged on Great Britain as strongly  
matters the Empire must have a single policy ”

*Isolationist ” or “ North American ” view*

point of view is based generally on the  
a real interest in European stability and  
ons cannot reach a healthy relationship  
learn how to settle their problems for  
contribute nothing to either the pros-  
e by committing herself to one side of a  
ch is all proposals for closer unity in  
for a strengthening of League sanctions  
since Canada’s geographical position in  
present world a practical security from  
likely, she should not be asked to pay  
for peace as countries which are more

s, the so-called isolationists refute the  
tion of their point of view, preferring  
the North American aspect of Canada’s  
on They would accordingly describe  
as opposed, say, to “ Colonials,”  
cribe their policy as a “ policy of aloof-

North American ” school of opinion is  
world is inevitably drifting into war,  
can do nothing to stop that war,  
ce ” policy for Canada is a policy of

, can best be described, firstly, in con-  
League and, secondly, in connection

of isolation should not, according  
can ” school, involve withdrawal  
a consultative body, the League has  
nomic sphere World peace would  
ganize it on an economic, rather than



on a military or political basis. As General Smuts said recently to a Chatham House audience

I cannot visualise the League as a military machine. It was not conceived or built for that purpose, it is not equipped for such functions. And if the attempt were now made to transform it into a military machine, into a system to carry on war for the purpose of preventing or ending war I think its fate is sealed. I cannot conceive the Dominions remaining in such a League and pledging themselves to fight the wars of the Old World, and if the Dominions leave it, Great Britain is bound to follow.

I cannot conceive of anything more calculated to keep the U S A. for ever out of the League than its transformation into a fighting machine, pledged to carry out its decisions by force of arms if necessary. And remember the U S A. has still to join the League before it will ever be its real self. Membership of the United States was the assumption on which the League was founded. Defection of the U S A. has largely defeated its main objects. And the joining up of the U S A. must continue to be the ultimate goal of all true friends of the League and of the cause of peace. A conference room of the nations the U S A. can and eventually will, join. It can never join an international war office."

To stiffen sanctions at the present time would be to give a blank cheque to the *status quo* Powers and prevent the necessary realignments that are taking place. Canada should continue to pursue the traditional Canadian policy of supporting the League but opposing sanctions as unjust so long as treaty revision is not proceeded with.

In the view of this school, Canada should remain neutral in the event of a European war. In order to be certain that this policy would be carried out she should announce in advance her intention to remain neutral even if this involved withdrawal from the League or the Commonwealth in the event of war and should immediately reorganize her trade policy in order to lessen her dependence on overseas markets. Admittedly a policy of neutrality might be difficult in view of traditional attachments and economic interests. It would therefore be necessary for the Government on the outbreak of a major European war to take not only active measures to prevent unneutral acts but also to announce to its citizens that if they travelled abroad during the war or traded with the belligerent they did so at their own risk. Such measures would involve great sacrifices but the North American school believes they would be worth the cost.

#### *Group Number Four — Collectivist*

A fourth section of Canadian opinion may be called "collectivist". According to this school Canada is in a position where she is willing to take a strong lead, to influence fundamentally both British and American opinion and policy — "A British Dominion" to quote the Hon. Vincent Massey, former Canadian Minister to Washington. It is after all a two-fold opportunity. It can speak and act with all the freedom of complete nationhood on the one hand, and as a member of the British Commonwealth, it has behind it the prestige of a great Empire.



A Dominion, to quote a homely adage, is in the position of eating its cake and having it too — a unique privilege. It can function like any other sovereign State, or it can bring its influence to bear on British policy when it may be appropriate, as has been done in the past, speaking with the candour which is natural between members of the same family.<sup>1</sup>

A similar sentiment was expressed recently by the Hon W D Herridge, Canadian Minister to Washington. Speaking unofficially to the Ottawa Canadian Club, Mr Herridge said

“ I do not belong to that school whose view it is that a nation of a mere ten million souls has little part to play in international affairs, and should therefore refrain from independent action in regard to them. With all respect, I think that view is just as stupid as, to me at least, it is unpalatable.

“ I hold the view that Canada, in certain circumstances, may have a dominant part to play in world affairs. We may be the Power which decides for peace or war. Any other view is a most unwise one. We have grown up. We have reached man's estate. We must put away all the signs and symbols of immaturity, and boldly play the part which comes to us to play.”

If, however, it proves impossible to establish an effective collective system, many members of this school believe that Canada would have to accept the inevitability of war, and therefore take the steps outlined by the “ North Americans,” to insulate herself from its effects. Others would be in favour of strengthening the bonds of Empire.

The argument for active participation by the Canadian Government in measures to establish collective security is stated by one of our groups as follows

“ If the collective system is not made effective, and as a result a world war breaks out, Canadian trade will obviously be affected, and Canada depends more than any other nation on foreign trade. The question of her security will also arise. If hostilities should break out in the Pacific, what guarantee is there that British Columbia will remain inviolate? If a major war breaks out in Europe, England will eventually become involved. Technically, Canada will at once be at war, though the extent of her co-operation will depend upon the will of the Canadian Government. If Canada takes part whole-heartedly, it will mean fruitless waste of men and money and will lead to a serious breach between races in the Dominion.”

There are differences of opinion on the steps which should be taken by the Canadian Government in order to forward collective security. A radical view has been stated as follows

“ The Canadian Government itself should initiate measures to organize world peace. The Canadian *démarche*, to be effective, would have to be accompanied by warnings and promises. Two warnings would have to be made: the first, that if steps were not taken immediately to make the collective system a reality, Canada would henceforth act in accordance with the most restricted interpretation possible of Articles X and XVI. Under such an interpretation

<sup>1</sup> International Affairs November, 1934



the Canadian Government would declare its intention never to participate in any sanction of the League of Nations since it would be obvious that the League was no longer a real League but only one of the competing alliances of Europe the second, that at the same time Canada would have to declare her intention of remaining neutral in all overseas wars whether League wars or non-League wars. The premise would be that Canada in order to co-operate loyally and effectively in the establishment of a real collective system was prepared to bear her full share of the necessary sacrifices of immediate national interests. The extent and nature of the Canadian sacrifices would have to be made very clear. They would have to be even more precise than the general peace programme which Canada was putting forward."

The official point of view of the collectivists as outlined in a resolution unanimously adopted at the annual meeting of the League of Nations Society in Canada (May 1934) reads as follows

"THE NATIONAL COUNCIL OF THE LEAGUE OF NATIONS SOCIETY IN CANADA conscious of the danger to the peace of the world if steps are not now taken to promote disarmament and strengthen the means of maintaining peace by international co-operation through the Covenant of the League of Nations and the Pact of Paris,

REALISING that the preservation of everything we value, the unity of Canada and the existence of the British Commonwealth as well as the future of Western civilization, are threatened if another world war breaks out,

AND BELIEVING that the Canadian people keenly desire peace founded upon law and justice and that the responsibility for peace, like the burden of war falls on us all,

DECLARES that both self-interest and self-respect demand that Canada, as a member of the League and of the British Commonwealth, should make her utmost contribution to the cause of peace by maintaining and strengthening the Collective System based on the Covenant of the League of Nations and the Pact of Paris, particularly

(a) by supporting amendments to the Covenant and supplements to the Pact which would make them effective and which would provide adequate machinery for the peaceful alteration of the *status quo*

(b) by working wholeheartedly for the full and rapid success of the Disarmament Conference to achieve essential measures of disarmament so as to stop further building and provide for the immediate destruction of all arms denied Germany by the Treaty of Versailles the progressive reduction of all armaments the rationing of key minerals, the abolition within two years of the manufacture of armaments for private profit the internationalisation of civil aviation and the provision within five years of an international air police force all under the automatic and regular supervision of a permanent commission

(c) by improving the machinery for the settlement of international disputes including for Canada the negotiation of an all-in arbitration treaty with the United States

(d) by taking every reasonable means to secure the membership in the League or failing this the co-operation, of the United States, U. S. R., Germany Japan, and other countries not in the League of Nations

(e) as part of such a general programme for the maintenance of peace and the securing of international and social justice by supporting the principle that the members of the League must be ready if need be to use the resources of the defence of each by moral and political pressure by the refusal to supply munitions and key minerals including nickel by the control of all financial and economic relationships and by the steady and complete reduction of



our obligations under a strengthened Covenant, and that States which are not members of the League shall agree to consult with the League and to avoid any act which might frustrate the collective effort to prevent aggression, and

(f) by taking steps in Canada to promote social justice and moral disarmament.

URGES the Government of Canada as an important member of the British Commonwealth and the friendly neighbour of the United States, to endeavour to persuade the Governments of the Commonwealth and of the United States to pursue a programme of joint action for the organization of peace upon the basis of this plan and urge its acceptance upon the world.

AND APPEALS to every Canadian citizen and organization to support the Government in every effort for peace and to co-operate with the League of Nations Society in Canada in a cause over which humanity can no longer afford to be divided "

### *Estimate of relative importance of each group*

As mentioned in the introduction to this section, the blurred and changing character of international alignments makes it difficult to define the various groups of Canadian opinion. Opinion is in a state of flux and will continue to be so until the balance of forces in Europe and Asia becomes clarified.

It is however possible roughly to estimate the present importance of the various sections of opinion which have just been outlined. It should be borne in mind, however, that a very large number of Canadians have no conscious views at all, in a crisis, they would necessarily range themselves with one or other of the groups which have been described. An attempt will be made to summarise the factors which would probably influence their decision.

#### *Group Number One*

The "traditional" point of view is that held by a large number of Canadians. It is substantially the view of both major political parties. It is supported, more or less coherently, by leading newspapers, and not opposed by an appreciable section of the Press.

The leader of the Liberal party, the Rt. Hon. W. L. MacKenzie King, advocated in December, 1934, that Canada should declare that it "would provide neither arms, nor foodstuffs, nor credits to any nation guilty of disturbing the peace." Since Mr. King has not yet declared that Canada should bind herself in advance to accept the decision of an international authority as to which State is the aggressor, his announcement in favour of economic sanctions does not appear to mark a very great departure from the "traditional" policy in the direction of a "collectivist" policy.

#### *Group Number Two*

The "colonial" point of view is a rapidly decreasing one. Canadians have become increasingly critical of British foreign policy since the war,



partly as a result of the Chanak affair. The Imperial Conference of 1926 resulted in a very general re-orientation of view as to our position in the Empire. These are some of the factors tending to diminish the strength of the "colonial" position. Another obvious factor is the decline in the percentage of the Canadian population which has come to Canada recently from the British Isles.

### *Group Number Three*

The extent of this section is difficult to determine though it is certainly strong numerically in the Canadian middle west, where an attitude of mind similar to that of the U.S. middle west prevails. This middle western attitude is rather one of moral superiority the feeling being that Europe is incorrigible and that we should become involved in as few "entanglements" as possible. It should be stated though that this view is in Canada conditioned by her great dependence upon world trade.

In contrast to the view of the two old parties in Canada, the "North American" attitude is the official view of the Co-operative Commonwealth Federation, the third Canadian political party (Former Labour Socialist) — the only party which has made an official declaration of foreign policy.<sup>1</sup>

The Province of Quebec might be termed isolationist in the sense that its people are reluctant to serve abroad in any conceivable conflict for any reason whatever. But French Canada stresses the British connection, for constitutional reasons.

The growing extent of the North American view claimed to represent a numerical majority of the people of Canada may be largely attributed to the failure so far to organise peace on a collective basis. Its future preponderance will probably depend on the success or failure of collective methods.

The isolationist position is also held by a considerable number of leading intellectuals largely of socialist convictions and by a considerable section of radical opinion. In these quarters it is

<sup>1</sup> Though the Co-operative Commonwealth Federation (C. C. F.) favours "radical collectivist policies to reorganise the collective system" it would probably be correct to say that its general tendency is in favour of a policy of North American aloofness. The official C. C. F. declaration of foreign policy reads:



argued that a Peace League of capitalist nations is a contradiction in terms. This argument is claimed by other socialists, however, to be academic. There is no guarantee, they say, that socialist States are *ipso facto* unaggressive, and further, the elimination of the causes of war must proceed *pari passu* with the destruction of capitalism. "The poverty front and the peace front have become one."

There is also some divergence of opinion among members of the "North American" group on the implications of Canadian withdrawal from the Empire, one section claiming that this will inevitably involve absorption by the United States, another denying this probability, and still another arguing that if it does happen it will only happen because our interests dictate such a course.

#### *Group Number Four*

Collectivist opinion, that is radical collectivist opinion, is numerically a small group though intellectually an influential one. On the other hand, collectivist opinion, more or less emphatic, is very general in Canada, and is an ingredient in the viewpoint of all the groups enumerated above, except perhaps the "colonial" view.

#### *Indeterminate Opinion*

Undoubtedly the majority of Canadians cannot be ranged under any of the categories described above, since most Canadians have not consciously thought out views on Canada's external relationships at all. This large "floating" population would, in a crisis, such as the declaration of war by Great Britain or the United States, decide for one or other of the alternatives outlined, depending on the circumstances of the immediate situation, and the strength of propaganda.

In the last major crisis with which Canada was faced, the outbreak of war in 1914, this floating population was readily convinced of the necessity of our participation with Great Britain. Whether or not, were a similar situation to arise to-day, it would be possible to enlist their sympathies, is a matter of speculation. New and significant factors have supervened, of which perhaps the most important is the general disillusionment that followed the last war, and the feeling, especially pronounced in Quebec and the West, that Europe is incorrigibly war-like, hysterical and self-destructive, and should consequently be left to work out its own salvation. Another important factor is the decline in numerical importance of that portion of the Canadian population which has recently emigrated to Canada from the British Isles.

In view of these circumstances, it is difficult, if not impossible, to estimate the probable reaction of the "floating population" of Canada were it faced with the alternative of participating in any war other than one in defence of our shores, or of withdrawing from the British Commonwealth of Nations, or the League.



## FRANCE

(Commission Française de Coordination  
des Hautes Etudes Internationales)

## FRENCH OPINION AND THE PROBLEM OF COLLECTIVE SECURITY

by GEORGES SCHELLE AND RENÉ CASSIN (*translation*)

By national security is meant the widespread feeling in the public opinion of a people that it has no reason to fear a foreign aggression, or at least that such an aggression is improbable or has little likelihood of success.

Now it is a fact that French opinion considered as a whole, no longer enjoys a feeling of security. The existence of this state of mind has often been recognised, and even criticised with a certain irony. There are, however some grounds for it. Be it the result of its geographical situation, of its economic wealth, of the tendencies of its ethnographic movements of the evolution of European history or even of the mistakes made by its successive governments the French nation which is, as is well known, one of those whose unity was earliest achieved and is most complete has suffered numerous violations of its territory and mutilations of its integrity and has deeply felt the wounds inflicted upon the complex of solidarity made up of similarities on which the nation is founded.

In particular the rural classes which suffered so heavily from the last war on the field of battle and through the gaps left in the population of the villages watch international events with a calm not unmixed with anxiety.

A new element in the collective psychology of the French people should be particularly emphasised at this point. The evolution of the French nation appears to be stabilised. At present its demographic situation is stationary. Its economic situation, though for the moment disturbed, possesses all the elements necessary to recovery. From the territorial standpoint the French collectivity since the restoration of Alsace Lorraine is definitely settled. It displays no territorial ambition. From the colonial viewpoint it considers itself satisfied.

As to internal questions there is almost complete unanimity regarding the form of government and leaving out of account the present unrest due to the economic crisis and to an excessive looseness in political behaviour the French people enjoys a liberty and professes a liberalism which corresponds to its temperament composed of scepticism and of common sense. It is a people in which the average age is fairly high and in which collective passions do not have power even among young people because until recently they could find



work. Public opinion, taken as a whole, cannot, therefore, help being conservative. That is the dominant note. French interest in progress is intellectual. Even the social question must find its solution in France by evolution, not by revolution.

In regard to foreign relations, it should be clear from all these facts that French public opinion wishes above all to pursue its destiny in peace, that it desires security and considers that it has a right to security. Why is it that, rightly or wrongly, it believes that this security is threatened? The answer to this question must be sought in the fluctuations of French public opinion since the close of the World War.

In regard to the preservation of security, it is possible to distinguish two main and divergent currents in French opinion.

There are, on the one hand, people — most of whom are, at the same time, peace-loving — who remain convinced that the only way to preserve peace and security consists in the possession by the nation of a strong military organisation, capable of intimidating and discouraging the potential aggressor, and in the possession likewise of perfected fortifications and armaments and of dependable alliances. Few people still say "*si vis pacem para bellum*," for it would be difficult to find in France, even among professional soldiers, people who desire war. But many consider that the only way to command respect is to be strong. This is what might be called a unilateral conception of security. It is the conception which was traditional before the war. To this tendency may be considered to belong the General Staff, the army — whose very existence finds its justification in this ideal — a part of the war veterans who experienced the difficulties of the war, everyone who is connected with heavy industry, especially with the metallurgical industry, and the right-wing parties, which are traditional in tendency or inclined to favour a dictatorial government.

At the other pole, and certainly forming a numerical majority, are those who think, because of the general lessons which they draw from the experience of the last war, that the protection afforded by force is uncertain, that alliances are unstable, and that the maxim "*si vis pacem*" is apt to bring about war. This part of opinion considers that security cannot be established unilaterally or individually for each State, that the only security is general security for all the peoples, and that what is needed therefore is an inter-national and if possible universal organisation. It seeks such an organisation in pacts of guaranty and of security, in the reduction of national armaments, in the development of the institutions of conciliation and of arbitration and in the development and strengthening of the League of Nations.

The mass of the holders of this opinion is formed by the parties of the Left, the labour unions, a large part of the victims of the war and of the war veterans (whose associations, made up in majority of country people, are often led by members of the teaching profession or by priests), the pacifist leagues, the associations for the League of Nations,



a part of the Catholic population, especially among the Social Catholics, and the majority of the intellectuals and university professors. This mass though less organised, less homogeneous and provided with smaller resources than its adversaries, especially as regards the Press possesses a numerical majority in the country and in Parliament. It loyally supported the policy of Aristide Briand, even during the period from 1928 to 1931 when the latter no longer had the complete backing of the Chamber of Deputies. It still has weight enough so that the governments which have successively held power have always proclaimed their attachment to this policy.

It must not be supposed, however that the two tendencies of opinion are sharply separated and opposed, except perhaps at their extreme wings. They have points of contact and they shade off toward one another. The partisans of military security may accept as an additional measure, the political organisation of general security. On their side, the partisans of internationally organised security and of disarmament are not lacking in that spirit of logic and of rationalistic realism which prevents them from being satisfied with bare pacts or with simple declarations of good will. They desire effective guarantees that the pacts will be applied. This is due not so much to distrust of foreign signature — or at least some of them — as to a spirit of constructive logic. Pacts or treaties constitute the law but they believe that there is no effective law especially between Powers if it is not accompanied by arbiters and by sanctions. This turn of mind which appears notably in the Resolutions on peace and disarmament unanimously voted, after long study by the *Confédération Nationale des Anciens Combattants* which groups more than three million men, is thus oriented directly though not always quite consciously toward a super-State construction, controlled and capable of coercive action, such as was already envisaged by the Commission brought together in 1917 at the Ministry of Foreign Affairs for the working out of a plan for a League of Nations, and such as Léon Bourgeois upheld at the Crillon Commission.

Hence the general attitude of the government however it may be composed, — necessarily desirous of grouping behind it a majority made up of the two fractions of public opinion, and of harmonising all that can be harmonised between them. It is for this reason that French governments uphold the formula security first then disarmament or at least disarmament in proportion to the degree of security obtained. Such a formula is calculated to win the support of a large part of both currents of opinion, without antagonising either of them. There is in fact only a minority at the extreme left which is fully decided to run the risk involved in abandoning unilateral security before obtaining assurances in regard to internationally organised security.

But it is far from sufficient to have brought out these general lines



of French opinion concerning security We must now explain their origin.

At the moment when the Peace Treaty was signed, French opinion was not intoxicated by the victory, it knew only too well how much it had cost in human lives and in material destruction, it remembered the varying fortunes of the struggle, the threat against Paris, parried with difficulty on three occasions, — at the Battle of the Marne, during the race to the sea, and at the time of the occupation of Noyon and Château-Thierry, it was aware of the immensity of the devastations which must be repaired It knew that victory had been the work of a coalition, and that a coalition is not a lasting phenomenon

Thus the Peace Treaty was not hailed with enthusiasm by the Chamber The Government was upbraided, by both the Right and the Left, for not having obtained the complete demilitarisation of Germany; and Foch was blamed for having urged the maintenance of a German army The Left declared that the destruction of German militarism would have facilitated and carried with it that of French militarism. So the ratification of the Treaty on October 2, 1919, obtained only 372 votes, whereas the next day the 446 members voting expressed themselves unanimously in favour of a motion introduced by Renaudel and Albert Thomas designating the League of Nations as the remedy for the defects of the Treaty "The Chamber calls upon the Government of the Republic, 1) to bring about the immediate meeting of the League of Nations, 2) to instruct the delegates of France, in view of this meeting, to prepare the examination of measures which, by means of the progressive reduction of armaments provided for by Article VIII of the Covenant, shall make it possible to bring about general disarmament " There is no doubt that French opinion was unanimous at that time in seeking security in *international organisation and demilitarisation*. Here again, the *Union Fédérale des Anciens Combattants Français*, which, at the beginning of 1919, had clearly encouraged President Wilson to get the Covenant of the League of Nations signed at once, had given exact expression to this opinion.

French opinion was to experience a first disappointment through the giving up of the treaty of guaranty which President Wilson and Lloyd George had proposed in exchange for the Foch-Tardieu plan to push back to the Rhine the military frontier of Germany. The refusal of the United States, carrying with it the freeing of England from its undertaking as well, made it clear to everyone that the *coalition* was indeed a thing of the past, and that the tendency of the Anglo-Saxons was and was to remain essentially opposed to automatic security obligations

Another disillusionment of the same kind grew out of the refusal of the Crillon Commission and of the Peace Conference to adopt the views of President Léon Bourgeois relative to the organisation of



an international armed force or even of a simple General Staff placed at the service of the League of Nations. It was necessary to be satisfied with Article 213 of the Treaty of Versailles, providing for investigation, decided by a majority vote of the Council of the League of Nations — a text which was never applied.

Nevertheless public opinion took a keen interest in the beginnings of the League of Nations. In spite of a certain scepticism and of the small degree of success obtained at the Crillon by the French representatives, in spite of the refusal of the United States to ratify the Versailles Treaty or to join the League of Nations, much was expected of the Geneva institutions. Public opinion counted on a return to favour of the French doctrines. But once again, it was the contrary that took place. The interpretation adopted at the beginning reducing to a minimum the organic powers of the Assembly and the Council, made a bad impression on public opinion. Article XVI at the outset met with the hostility of the Assembly and the resolutions of 1921 leaving it to each Government to decide whether or not the Covenant had been violated, led to the belief in France that this provision was thenceforth relegated to the position of what the jurists call purely potestative obligations — a concept which is very familiar even to the uninitiated.

Unfortunately the analogous interpretation given shortly afterwards by the Assembly to Article X of the Covenant lent further force to this impression. The guarantees of territorial integrity and political autonomy contained in this article which had come to be considered by public opinion as the centre of the Covenant seemed to be thoroughly shaken and the feeling began to grow that an international organisation was of no great efficacy when its essential organs were stripped of the right to make *organic* decisions and were reduced to the role of offering opinions even if these opinions were of the highest moral importance. It appeared to many Frenchmen that the Governments represented at Geneva were endeavouring systematically to diminish the significance of the signature which they had placed at the end of the Covenant and to transform this solemn constitutional Treaty into a mere optional Agreement. This was indeed the theory officially held by some Governments.

Thenceforth, all the efforts of the French delegations at Geneva were to be concentrated on the *restoration* to the provisions of the Covenant of their original meaning and to the organs of the League of a determining power which French opinion had always attributed to them. From this moment the opponents of disarmament had a considerable advantage. It was easy for them to base their propaganda on what they represented as a self-evident fact, namely that as long as the guarantees of security had not been obtained behind which it would be imprudent to abandon effective and established means of defence for future hopes which were purely yalmms.



The situation did not change until after the labours of the temporary mixed Commission on armaments and the celebrated Resolution XIV of the Third Assembly, in which the French delegation, supported, moreover, by a united majority, secured the admission of the *necessary connection between security and disarmament*. Security first, disarmament agreed to in exchange, and in proportion to the degree of security obtained. It was on this basis that was to be developed the first official construction relative to disarmament as function of security as it was to be built up at Geneva under the direction of J. Paul-Boncour with the fairly general assent of French opinion and the consent of the military element itself.

It should be noted, furthermore, that this process was carried out under the impression produced by the adoption of the Geneva Protocol of 1924 and of the consummation of the Locarno agreements in 1925. These two events greatly impressed public opinion. It may even be said that the adoption of the Protocol set up in France a veritable movement of enthusiasm for the League of Nations. It grew out of a Franco-English agreement, the Herriot-MacDonald accord, based on a common democratic movement on both sides of the Channel.

In spite of the superficial character of certain aspects of the Protocol, public opinion accorded its confidence because of the preventive measures, borrowed from the Draft Treaty of Mutual Assistance, and because of the power of decision conferred upon the Council. Public opinion recognised in these provisions the essential elements of the plan which Léon Bourgeois had always recommended. It will be observed, moreover, that the adoption of the Protocol coincided with the first appearance of Aristide Briand at Geneva. It was Herriot, however, who had launched at Geneva the formula: arbitration, security, disarmament, which won immediate success because it expressed in simple terms the popular view. It was a great disappointment when the change of ministry brought the Conservatives into power in England and led to the giving up of the Protocol. But public opinion reacted favourably again to the conclusion of the Locarno agreements and to the Thoiry interviews. The partisans of an entente with Germany pointed out that the initiative had come from that Power, and a large part of public opinion showed itself disposed to try the experiment of an entente in good faith between the recent adversaries. It was hoped, moreover, as the Assembly of the League of Nations itself had recommended, that the Locarno agreements would not remain isolated, and that their multiplication would be equivalent to a sort of detailed application of the Protocol. The jurists, for their part, stressed the technical superiority of the Locarno agreements over the Protocol, especially in regard to the value of the guaranty promised by Italy and England. The participation of Germany — in other words, the open character of the accord — was accepted without mental reservations, and it was generally held that the accord was



morally superior to particular defensive agreements from the standpoint of the calming of opinion and of moral disarmament

It was in this favourable atmosphere, which, it was felt, should be turned to account, that was born the first French disarmament plan.

It was France which, in 1925 undertook to fan into activity the cooling zeal for disarmament of the League of Nations. In the preceding period, it had been especially England and the neutrals that had been most urgent in favour of disarmament. But it seems that their zeal had cooled because the Anglo-Saxons wished to complete the Washington agreements of 1921 and to achieve agreements about naval armaments independently of land disarmament and before it. The French Government, on the contrary, wanted to see the disarmament negotiations stimulated by the entrance of Germany into the League of Nations. It wanted them to be held at Geneva, and it wanted the problem to be studied as a whole, in view of the real connection between the different armed forces whether on land, on the sea or in the air.

This doctrine of *indivisibility* was moreover logically linked with the doctrine of *war potential* which was worked out at that time and which corresponds to a very popular idea, — popular because it too is a matter of common sense — namely that the capacity for aggression as well as the ability to prolong the struggle or to continue resistance depends on factors far more complex than those represented by the quantities and proportions of visible armaments.

The *Preparatory Commission* for the Disarmament Conference created by the Assembly in 1925 upon the insistence notably of the French delegation accomplished a very considerable technical task. But the draft convention which it finally drew up in December 1930 contained little more than chapter headings and left in blank the figures of reductions. The result, not only in France but in many countries, was a feeling of disappointment and a very definite decrease in the hope with which was regarded the effort toward disarmament.

The public was convinced that in the words of a current formula disarmament means for each nation merely the disarmament of the others and that the interminable debates at Geneva were only a diplomatic game in which each government tried to maintain its own advantages and to make its partners lose theirs.

At the beginning of 1928 the French Government in the person of Aristide Briand took a new initiative which was to have particularly far reaching consequences. We refer to the Pact for the renunciation of war which was proposed at first as a Franco-American agreement but which was to develop into the general Pact of Paris of August 1928. It is unnecessary to recall here the long negotiation which led to the original plan and to safeguard the system known as that of war of sanction or rather of police operations as stated by the Government



of the League of Nations and the Locarno agreements. The conclusion of the Pact of Paris was very favourably received by public opinion as the dawn of a new era, but with a certain reserve as to its efficacy. French opinion, in fact, could not help seeing that once again, and more clearly than ever, it had to do with a *bare Pact*, a simple engagement. The jurists would no doubt define its scope by saying that it was "normative" and that it was equivalent to the suppression of the "competence of war," of the right of governments to take the law into their own hands. But it was obvious that it was not accompanied by any constructive machinery calculated to ensure its effectiveness, that it still provided no means of settling conflicts or of defining and designating the aggressor, and that England and America had accepted it subject to certain reservations which constituted a sort of reserved police domain in which it was difficult to see how an offensive operation was to be distinguished from legitimate defence.

. It is approximately at this period, apparently, that is to be placed the growth of scepticism in public opinion in regard to "pactomania."

. Thus it is not surprising that French opinion attached only a limited importance to the further results of the activity of the Assembly and of the work in preparation for the Disarmament Conference.

Moreover, confidence in the effectiveness of the League of Nations for the prevention of aggression and the maintenance of international public order was soon to be subjected to the most severe ordeal which it had encountered since the war. The Japanese aggression against Manchuria, the war at Shanghai, the withdrawal of Japan from the League of Nations could not, it must be admitted, fail to deal a heavy blow to the prestige of the Geneva institutions.

Is it necessary to add that the tergiversations and the dilatory character of the negotiations and of the procedure in the Chaco affair, — though that affair has remained extremely vague for the immense majority of French people —, have only accentuated this impression?

. The most remarkable upheaval of opinion, the last movement of enthusiasm, took place in February, 1932, in connection with the opening of the Disarmament Conference. At the public session in the Electoral Building at Geneva, which was given up to the reception of petitions and to the expression of popular desires, the French orators attracted particular attention by the generous tone of their speeches and by the bold ideas which they expressed. It was sincerely hoped at that moment that a different atmosphere was about to be created, and that the governments, under the pressure of external events and especially of the world economic crisis, were going to make an effort to understand or even to act boldly, in order to free themselves of the technical preoccupations and the secret political purposes which



had thus far prevented any conclusion. In reality, a miracle was expected, at least by that part of public opinion whose passionate longing for an age of fraternity and peaceful work inclined it toward a mystical state of mind. Perhaps only a generalisation of this wave of mysticism could rapidly have brought about satisfactory collective decisions. Such was the opinion, at least, of other more practical minds, who could not fail to observe that the general situation was as unfavourable as possible to an effective solution of the problem and who wondered whether the favourable moment had not already gone by.

Another element was soon to introduce yet another unhappy complication into this confused state of French public opinion and to extinguish the flame of enthusiasm which had been rekindled in February 1932. I refer to the events in Germany to the disappointment caused by the "reprisals" which followed the evacuation of the Rhineland, the disturbed conditions which marked the end of the presidency of the Marshal, the difficulties experienced by the Brüning von Papen and Schleicher Governments, the sterility of the visit to Berlin of MM. Laval and Briand, and especially the increasing growth since 1929 and the final triumph of the Hitlerian movement. It is to be noted in this connection that *Mein Kampf* was translated into French and that the press gave wide publicity to the passages which were the most characteristic, the most violent and the most filled with hate toward France, those in which the aims of war and of revenge were stated with the greatest brutality. The adversaries of the policy of Aristide Briand had already made use of the papers of Stresemann and of the famous *finassieren* but these documents were open to interpretation and discussion, whereas the Hitlerian credos were glaringly clear. It is to be noted also that this was the time of the twilight of Briand's policy of his failure to be elected President and of the passing of that statesman.

It was also the moment when the demand of Germany for *Gleichberechtigung* began to be heard and to become insistent. That demand is known to have produced if not a misunderstanding at least an implicit and partly intentional opposition between the respective views. When French opinion (first expressed by the associations for the League of Nations) and policy had envisaged recognising the equal rights of Germany those rights had always been thought of not as a theoretical equality but as a legal equality an equality in principle capable of being realised in fact but progressively and at a date not yet determined.

But French opinion soon received the impression that the German claim was ambiguous and that what the German Government was aiming at in this quest of equality was not only the satisfaction of the point of honour and the restoration of a legal situation, but also the re-establishment of a situation of fact which the Hitlerian policy



posing and even menacing military force, should make it for that Government to speak vigorously in international s, to make use of that "potential" which is implicit in the attitude of the Great Powers, and, by this means, to discuss a footing of real equality of *fact* with its partners, whoever be

foregoing observations explain why French opinion, as of the Disarmament Conference continued and as that again became entangled in the labyrinths of technicality *mbinazione*" which the chancelleries and the General Staffs g more and more complicated, began to grow more and ve, hard to satisfy in regard to security and suspicious concessions With anxiety it saw proposals follow yardsticks give way to yardsticks, blind alleys replaced blind alleys, and especially it found it hard to understand public opinion should accuse France of aiming at im- hegemony and should consider her as the chief adversary

ch were undoubtedly conscious that the majority of them ans of disarmament, but under certain conditions, and d foreign governments of pursuing disarmament without and without security — limited moreover to land dis- for purposes of domestic politics, of prestige or of minis- governmental success Those governments were not, definitely scheming to weaken or compromise the situation ut at least they were paying *no heed whatever* to her legitimate certain exaggerated proposals in particular, such as that asia, advocating total and immediate disarmament, seemed " on not merely empty bluff but, in view of the support received, especially from Germany, hidden *traps* The vernment had not yet evolved at that date the policy which ia characterises its attitude with respect to the organisation

ns of 1932 having distinctly confirmed the will to understanding of the French people, the new Government by one all the obstacles to that understanding In t month after its formation, it had to liquidate the eparations at Lausanne and to collaborate at Geneva in out of the Benes Resolution In order to give a of its will to avoid the "armament race" during the Conference, it reduced military expenditures by 10% sion in the work of the Conference was to be marked, two other important events on the one hand, the declar- y that she would not return to Geneva so long as "Gleichberechtigung" was not allowed, on the other



hand, the elaboration by the French delegation of a positive plan calculated to guide the labours of the Conference, once they were resumed, to a satisfactory result — organisation of security equality of status, disarmament.

Did this really impressive effort bring success or at least create a profound psychological effect? No. And the causes of this lack of success were manifold.

After having earned to power a group of men charged with giving practical expression to its peaceful aspirations, French opinion concentrated its attention upon problems of domestic policy especially budgetary problems and when it looked beyond the frontiers, it was not toward Geneva, where a Conference already a year old was dragging out its existence, but toward Berlin, where Hitler chief of the National-Socialists, who had just taken power was proceeding to a series of domestic measures and of gestures in the field of foreign affairs which were of such a nature as to alarm seriously the rest of the world.

After the outright failure of the London Economic Conference, a new attempt was made to surmount the principal obstacles.

Bearing in mind the growing preoccupations of French opinion — preoccupations concerning Germany which, moreover were coming to be shared in other countries and which appeared openly when, in the Assembly of 1933 Germany herself raised the problem of minorities by refusing to permit augmentation of Jewish minorities — the French delegation began conversations with those Powers which had taken part in the Declaration of December 11 1933 regarding equality of rights in a system of security. Finally an agreement in principle was reached to offer Germany a General Convention for eight years, completely replacing so far as she was concerned Part V of the Versailles Treaty.

The execution of this Convention was to be divided into two stages of four years each.

It will be recalled that Germany categorically refused to accept this plan or even to discuss it. The very day on which it was laid before the Bureau of the Conference at Geneva a telegram from Berlin to Mr Henderson announced the withdrawal of the German Government from the Conference on the ground "that it is now established that the latter will not fulfil its sole task which is to bring about general disarmament."

How did French opinion react to this withdrawal which was accompanied by the deposit with the Secretary General of the League of Nations of notice of the withdrawal of Germany from the latter institution? The French public grasped at once its relations' consequences.



.. It is very striking to observe that the rupture of October 14, 1933, restored to prominence the question of security, even in the most strictly pacifist circles. Far from letting themselves be deceived by the ardour with which, from that moment, the Hitlerian authorities provoked bilateral conversations and offered or even concluded with neighbouring Powers bilateral pacts of non-aggression, the French or international federations for Peace and the League of Nations saw in this activity the sign of a thoroughgoing hostility to every sort of collective organisation of the Community of Nations, whether it concerned the League of Nations, the European continent or certain particularly sensitive regions.

It was with a view to avoiding the possibility that the absence of an organisation of collective security within the framework of the League of Nations might create a justification for the old policy of alliances, that these federations organised numerous meetings or congresses for the "*Defence of Peace*" in which the idea of collective security and the boldest measures of international compulsion (international air police force, etc.) were urged.

. Did the events of the year 1934 promptly contribute to allay the apprehensions of public opinion among the free peoples? By no means.

Three types of facts developed especially the feeling of insecurity in French opinion during this period ending in the autumn of 1934, namely, the activities of Hitlerism in the field of foreign affairs, and terrorism, the dissensions among the political or governmental collectivities which might have imposed limits on those activities, and the interior evolution of the Hitlerian regime toward a military dictatorship and a state of particularly rigorous martial law.

If the efforts of the French delegation at Geneva were favourably regarded by the "man in the street," the return to an active collaboration with Italy and England, aiming at an organisation of collective security including Germany, was no less warmly welcomed by the opinion of our country.

History will no doubt record that the beginning of 1935 constituted one of those occasions for peace which are distinctly exceptional in periods of crisis. Indeed, immediately after the Saar plebiscite, in which the French nation had refrained from placing its self-esteem at stake, while Hitler had sought and found in it his first great political success, both at home and abroad, the Führer multiplied appeals in favour of peace, addressed to France. The latter did not merely "acknowledge" these appeals, she replied to them in entire sincerity. The terms of the communiqué of London are conceived, in both substance and form, as an offer of collaboration for peace, most honourable for both parties.



Germany found herself at this moment at the crossroads, forced to choose between peaceful integration in an organised Europe, with the obtaining of a place worthy of her — or continuation of her isolation and of feverish arming in the midst of distrustful nations armed to the teeth.

It appears, alas that the Third Reich, as soon as it had calculated the advantages and the risks involved in each of these alternatives decided quite definitely in favour of the second.

Only a few days after the Anglo-French offer which had been warmly welcomed by the Foreign Offices and the great newspapers of the whole world, Germany in a note of February 17 jumped at the proposal of an air pact, as constituting the recognition of her right to maintain a military air force. Complete silence, on the contrary regarding the suggestions relating to security and to Germany's return to Geneva a few vague words on the proposals relative to armaments, which would at one time have fulfilled her expectations and finally an attempt to create a rupture between England and France by laying upon our country the exclusive responsibility for former failures and by inviting England alone to a direct conversation at Berlin.

Such an attitude made French opinion really uneasy. This uneasiness increased when the violent German campaign was set in motion against the British *White Paper* which had merely set forth facts well within the limits of the truth, touching German rearmament. But it changed to a veritable indignation when, replying by a blow of the fist to the offer of broad negotiations on a footing of equality Hitler took *without compensation* what was to have been the stake of the negotiation, and promulgated the law of March 16 1935 re-establishing compulsory military service — that is to say denounced unilaterally the Treaty of Versailles.

And now must we, as a non French statesman has proposed substitute for the traditional formula "Arbitration Security Disarmament" the triptych "Security Security Security"?

In spite of the very critical situation which reproduces with an even higher scale of risks that of October 15 1933 French popular opinion still refuses to envisage war in the near future as an ineluctable necessity. It remains then, on the whole anxious but self possessed. It would easily become irritated against those who wish to stir up or who pretend to feel alarm. It would certainly not regard with a favourable eye individualist alliances outside of the frames most recently established by the League of Nations. The coexistence of "rival blocs" might become the pretext for preventive wars or for imprudent operations destined to serve collective or individual aspects entirely unrelated to the organisation of peace.

But our peasants and artisan believe that it was not the armament races which lead to it. Can it be so? Let us believe that it is.



present state of affairs, it is possible to guarantee peace by the mere signing of a Convention for the reduction of armaments, adopted at Geneva by all the nations and presented by them to Germany in order to force her to sign. Even a simple halt in the armament race, which would be infinitely valuable, cannot be obtained without a veritable organisation of collective security in general and guarantees of the execution of the Convention in particular.

Thus, then, we are brought back, whatever our preferences, to the following solution. To avoid a return to the alliances of the period before 1914, the Stresa Conference and the Council of the League of Nations must obtain *a definite and reciprocal promise of mutual assistance* from the peaceful nations, *against all attempts made to disturb the territorial arrangement of Europe*. Whether regional or universal, these pacts can avoid war, if they are precise, fitted into the framework of the League of Nations, open to all, and, above all, *immediate*, and by that fact, they will make it possible for the world to limit, control, and progressively reduce national armaments, until finally police forces, aerial or other, essentially and organically international, can be established.

In the eyes of Frenchmen, at present, the power of intimidation which could be exerted by a serious strengthening of solidarity would constitute the psychological factor of security and peace, because it would put an end to whatever element of bluff there might be in certain quarters, and would prevent all dreams of aggression which might be real.

The public opinion of the Anglo-Saxon peoples, and in particular of the British people, cannot forget that, within the nation, the liberty and security of individuals are maintained thanks both to the self-control of the latter and to a very strict collective discipline. In international matters, the necessity of establishing such a discipline is all the more imperious because certain nations have not yet acquired or may lose their self-control.

An ounce of prevention is worth a pound of cure.

## GREAT BRITAIN

(British Co-ordinating Committee for International Studies)

### BRITISH OPINION ON COLLECTIVE SECURITY

The official British attitude towards the several proposals aiming at collective security has varied somewhat — though less perhaps than is sometimes supposed — according as elements of the Right or of the Left have been dominant in the House of Commons. Thanks partly perhaps to the doctrine of continuity in foreign policy, partly



to the unvarying fundamental acts of England's situation in the world, the differences between the policies of different governments have been far less wide than those between the ideas of the more extreme, and sometimes the more vocal, of the non-official elements in the major political parties.

In a study of this kind, it may thus be helpful to distinguish between at least four or five types of thinking. First, there are the views reflected in actual governmental policy. Secondly the official views of the several political parties. Next, the multifarious views held among that élite to whom foreign affairs are a matter of serious intellectual consideration, and from whom there emanate all the lectures, articles and books on topics in this field. Fourthly there are the notions of that vast portion of the electorate who have, and claim, no special competence to think out for themselves the problems to which their opinions relate. Fifthly a tiny minority may have no opinions at all.

In the milieu of unsophisticated electoral opinion, it is probably true in England, as no doubt elsewhere, that persons exist who either care nothing for internationalist causes, and much for what they think to be national interests, or caring little for national interests are keen internationalists. The bulk, however of the British people probably sympathise in varying proportions both with internationalist causes and with the defence of the special interests of their own country.

Much thus depends upon the way a given issue is presented to public judgment. It is, for instance, quite possible that some who would pay lip service, or even sincere homage, to the abstract ideal of collective action for peace, would yet show hesitation if and when the fulfilment of that ideal was found to involve a call for national sacrifices in the general interest.

It is sometimes suggested that as between the Right and the Left the chief difference reduces itself to one between two intellectual types: the Right distrustful of abstract reasoning, reliant on what they judge to be the teachings of hard experience, holding to what they claim is a realistic view of what Great Britain can do, and can afford to do, and sceptical of ambitious projects — and, on the other side, the Left questioning the relevance of history in a world of change, impatient of complex fact at its ease in the realm of simple ideas, sanguine as to the effectiveness of paper arrangements, and prone to derive its policies by logical deduction from plausible principles accepted *a priori*. This it is also suggested is why a Government of the Left may more easily see eye to eye with certain continental Governments on the merits and advisability of agreements specifying in a hazy way what is to happen in contingencies rather vaguely indicated. The suggestion is that the Conservative and more characteristically British attitude results from the absence in England of a written Constitution. It is perhaps truer putting the matter the other way round: a written



England's lack of a written Constitution to the people's "constitutional" preference for a flexible framework — within which good faith, good sense, and good will should be left to devise *ad hoc* the special solution best adapted to the unique requirements of to-morrow's unprecedented case.

Though there may be something in this view, it is surely also possible that there is a difference in emotional bias at least equally influential in predetermining policy. Roughly it may be said that, while neither Wing is wholly internationalist or wholly parochial, the Right, as seen by the Left, is apt to appear unduly careless of supra-national interests, whereas, to its critics of the Right, a Left Government seems to take too lightly its responsibilities as trustee for the time being of the special interests of England. It follows that, in order for an internationalist policy to command general support, it had better be that of a Conservative Government, and, for a relatively firm policy to escape serious criticism, it should be one pursued by a Government of Labour. The converse equally applies, and it is surely unnecessary to furnish illustrations.

It is, moreover, to be noted that the moral fervour often imported into discussions concerning the League of Nations may form a definite obstacle to clear thinking. The British people have what they believe is a long and honourable tradition of internationalism. It is, however, mainly a humanitarian, ethical and quasi-religious tradition, a tradition of "doing the right thing" when the time comes rather than of promising beforehand to do what "foreigners" may judge to be the right thing. That it may often have been found possible to represent to the public as "the right thing" just whatever, at a given moment, happened to suit the policy of the Balance of Power, does not affect the correctness of this interpretation. As part of this zeal for "the right thing," the average man probably still feels considerable concern for "Britain's good name," a concern which particularly requires that promises should not be given and then broken. Hence a sometimes almost obstructionist diffidence towards the giving of any new promises at all. England, one may claim, has a better record for keeping promises than for making them.

One more preliminary observation — with reference to the theory and practice of democracy in England. As a matter of theory it seems to be more or less universally assumed that, for its foreign not less than for its domestic policy, the Government is effectively answerable to the electorate, that it is the will of the people that should be the determining factor, and that the Government will ever be mindful of this principle. Yet there seems to be a notable discrepancy in this matter between theory and practice. In practice, it is rather unusual for specific issues of foreign policy, or indeed for foreign policy as a whole, to become the crucial question at election time. Nor does it



seem to be the case that governments, in making their day to day decisions, give paramount consideration to what they may think to be the views of the people. Of course, in England, as in any country where thought, speech and writing are effectively free, there are 'movements' of every sort and kind not many of these, however are important enough for the Cabinet to take them seriously into account in shaping its foreign policy.

Only when there occurs some issue on which appeal may be made to some deep-seated sentiment or rooted prejudice would it appear possible for the Government's opponents to make much political capital against any given course, and necessary therefore for the Government carefully to sound the attitude of the electors before committing themselves to a definite line. Pride and sense of ownership in relation to the Navy and fear of Bolshevism, are examples of such sentiments. An even better instance is the horror of war.

With such possible exceptions as these the tradition of reliance on the mature wisdom and trained understanding of the Foreign Office predisposes a large section of opinion in favour of whatever policy is decided upon as right by the Government of the day. Thus although in refusing some proposed new obligation, a Government is as a rule safe in invoking the reluctance of public opinion, this does not at all imply that were the opposite policy deemed advisable, it could not with a little skill and patience, be explained to the satisfaction of the people.

In qualification of what has been said above it is to be noted that owing partly no doubt, to the anxious times through which we have been passing, partly also to the effects of broadcast discussion of public questions, popular interest in international affairs has probably increased very much of late. As evidence that the problems of peace are now definitely on the *tapet* attention may be drawn to the so-called National Declaration in connection with which so many organisations political social and religious are at this moment canvassing public opinion in the country.

Now if the collective system may be defined as involving a recognition of common responsibility for co-operative action in preventing war and in removing the sense of insecurity it may or may not be true to say with Sir Arthur Salter that probably in no country to-day is that system regarded as an integral factor in the national policy. In Great Britain at all events opinion among the mass of the people is on this issue by no means clear simple or unanimous. Because of the "pull" away from the "war ridden" European tradition—and obvious to that in the United States—there is a natural disinclination to accept any system of sanctions which foresees the use of armed force against a recalcitrant or law breaking State. No one has better formulated what I believe to be the predominant British feeling than General Smuts in a recent speech in which claiming to call in all the experience of the British



Commonwealth, he rejected the idea that the reign of law in international affairs was to be instituted and upheld by coercion under centralised authority. He continues to regard the League of Nations as primarily a mere consultative machinery for peace, a meeting place for the representatives of foreign States in the tradition of the pre-War Concert of Europe.

Lord Lothian gave expression to this attitude, as prevalent at the time of the drafting of the Covenant, when he called attention to

“ the idea that regular conferences of the nations will point the road to a fair solution of all disputes, and that the nations themselves will voluntarily and without coercion give effect to what the public opinion of the world comes to regard as right ”

This view was based on the assumption that “ with the defeat of the Central Powers during the War and the spread of democracy a moral regeneration of the world was bound to take place ”. That the facts of to-day are so far from bearing out the assumption of a democratic world has not altogether disillusioned those who look to reasonableness rather than organisation as the road to peace. As a well-known English Liberal has said “ We in England do not believe in external compulsion, we believe in the internal force of conscience. That is the great puritan tradition ”.

What then can be said as to the general attitude in England towards the post-War search for collective security, in its several phases? When in 1923 Lord Cecil sponsored, along with Colonel Requin, the Draft Treaty of Mutual Assistance, he represented probably an insignificant minority of English opinion. The general public took little or no interest in the work at Geneva, and were for the most part ignorant of the obligations undertaken by the signatories of the Covenant. In this respect, the episode of the Geneva Protocol did produce some change. The impression, however, that Great Britain was to be asked to pledge her armed forces in advance to co-operative action with other States, came as something of a shock—and this not merely to the Conservative part of the nation. Before a Conservative Government finally concluded the Locarno Agreement, a vigorous press campaign had prepared the ground for the acceptance of this new entanglement. The interpretation then given to British obligations under Article 16 did not, however, attract much public attention. Thereafter with the discussions on disarmament at last well launched, most of the attention in Great Britain became centred on the idea of securing an allround reduction of national armaments, and the efforts of Continental States to link this objective with security were viewed often with impatience, if not with positive annoyance. The currency of moral idealism underwent a further inflation through the Briand-Kellogg Pact. Even at the end of 1932 when the Constructive Plan was put forward at Geneva by the French Government, the public mind was still confused on the



subject of security. An example of this distortion is the following presentation in *The Daily Telegraph* of the French plan

"A contingent of the British Navy would be at the disposal of the League and would bear the brunt of any blockade of an aggressor ordered by that body. Britain a military intervention in a European war under the terms of the Locarno Pact would be automatic. She might have no say in the matter. Vital changes are made in the League Covenant so as to secure the designation of the aggressor either by a majority of the Council, or by a local commission."

Along with belief in the principle underlying Article 11 (whether consciously associated with that article or not) there has been widely prevalent in Great Britain the assumption that with the United States no longer a prospective member the substance of Article 16 had been reduced to the status of a pious general principle of by no means universal applicability. The absence of the United States has indeed been an all important predisposing factor in the public attitude of opposition to various proposals for collective security elaborated at Geneva. Two other points however should also be explained.

The first has reference to the abortive Tripartite Guarantee Treaty of 1919. The significance of this instrument was not widely appreciated in Great Britain, even among those who had at all events heard of its existence. That the Covenant of the League of Nations was to be regarded as no more than a transitional *modus vivendi* a mere half way house on the road to a more effective security system yet to be devised — this view has never won general acceptance in England. The British people through their insular position and long successful practice of Balance of Power diplomacy still have little conception of what a sense of insecurity means, and consequently little understanding of the attitude taken by certain Continental States towards any proposal for fulfilling the 1919 programme of general disarmament unaccompanied by offers of guarantees supplementary to those contained in the Covenant — a document which after all, speaks of disarmament but says nothing about any such *additional* guarantees. The national security mentioned in Article 8 was widely assumed to be sufficiently provided by the Covenant itself and that policy of military alliances to which France and other countries resorted in 1920 was viewed without sympathy and with little disposition to see its cause and motive in Anglo-Saxon aloofness from Europe.

The second point relates to Article 10. Among those who gave any thought at all to the matter three distinct tendencies were to be observed. First there were those who saw in that article a far reaching commitment involving League members in a futile effort to stereotype for ever the *status quo* resulting from the Treaty and therefore constituting in their eyes an insuperable objection to the League itself. An alternative attitude laid stress on the alleged vagueness with which the article pledged members to any positive action ("the Council shall advise") — and would not Great Britain herself be reproached on the



Council? Thirdly, those friends of the League who, while taking Article 10 seriously and literally enough, sought to disarm objectors by arguing a close organic relationship between it and Article 19, appeared to have very little influence

There is also a strong undercurrent of opinion which has been above all conscious that the British Empire itself was "passing through a difficult and delicate process of constitutional reconstruction." The articulate distrust in certain Dominions for anything in the nature of a link with the European Continent, especially so long as the United States holds aloof from the League system, has made it obvious to many in Great Britain that commitments, even of the Locarno character, would have, in future, to be accepted only with the utmost circumspection, and that still less would arrangements on a wider scale be practical politics. Even to-day, when the course of events in Europe has probably induced a deepened sense of the need for some form of more effective team-work in the cause of security, proposed measures are still liable to be assessed chiefly in terms of the amount of disarmament they may be thought to make possible.

A writer in *The Round Table* (September, 1934) thinking in terms of national security, has clearly defined the view of those who see Great Britain as a "world" Power, unable to throw her material weight on the side of collective security in the sense of automatic European engagements so long as the United States stands outside the system

"The whole Commonwealth is safe from aggression, provided the integrity of France and Belgium under the Locarno Treaties is maintained, provided the Singapore base is in working order and the Suez Canal held, and provided there is friendly association with the United States and no serious difficulties arise with her over the 'freedom of the seas.' That is the regional security system of the British Commonwealth."

Before going on to examine more systematically the pronouncements on security made from time to time by British Governments, it may be convenient briefly to describe some of the many schools of thought grouped together earlier in this paper as collectively making up the stratum of informed lay opinion.

1 *Imperialists* A relatively small but very vocal section of public opinion rejects the whole conception of collective action for the preservation of peace through the League of Nations. We have recently had a clear statement of this view from Lord Beaverbrook in a broadcast talk.<sup>1</sup> These imperialists, as they should be called rather than isolationists, are impressed above all with the idea of maintaining the British Empire as a strategic and economic entity, and therefore of cutting adrift from any and all "entanglements" in Europe. The traditional Balance of Power policy *vis-à-vis* the European Continent is

<sup>1</sup> Published in *The Listener*, 31st October, 1934



rejected because of the great change in the character of war itself — there is no such thing as victory any more." A proposal for the alliance of Great Britain with France or Germany is regarded as equally futile, for much the same reason. The League of Nations is represented as a broken reed, from the point of view of giving any security — and it is interesting to observe that this school of opinion takes it for granted that the main object of the League has been to maintain the *status quo* as established by the Peace Treaties — it has been the private property of the French Republic — and can now only promise collective action against Germany in the event of war as 'the headquarters of an anti-Hitler alliance. Lord Beaverbrook tells us frankly that he would have Great Britain consider herself released from her obligations under the League Covenant and Locarno giving the reason that 'treaties only remain valid as long as the circumstances in which they were made remain the same.' On the other hand this school attaches the greatest importance to Anglo-American co-operation — companionship in isolation. Lord Beaverbrook calls it with the Dominions and the United States.

A book by an eminent military expert<sup>1</sup> which was recently published seeks to rationalise the confused feelings animating many a patriotic Englishman now reacting strongly against internationalism. The author makes various proposals for co-ordination among the component parts of the British Empire in various departments of policy including defence, on the assumption that the war-created political unity of the Empire needs to be consolidated — whereas contact with European nations at Geneva is likely to result in disintegration. It is assumed too that the conception of the United Kingdom as the centre of a world trade system having been ruined by the wickedness of the foreigner and the folly of British politicians since 1918 the development must be in the direction of the Empire as an economic unit giving much the same scope to British enterprise and British qualities as the vast area of the United States offers to Americans.

2 *Democracy and Peace*. This imperialism "which in comparatively few cases is militant shades off into a vision of all peace loving countries co-operating under Anglo-American leadership once again to make the world safe for democracy. Such a sheep-and-goats view relies for its support which is fairly considerable on the high moral outlook of so many Englishmen on the question of peace and war. Thus a representative Tory of the younger generation takes his argument for withdrawal from the hopeless morass of European politics "on the strength of pacifist opinion which was retorted indignantly in the much-discussed motion of the Oxford Union Debating Society in February 1933 — that this House will in no circumstances fight for its King and Country." *Peace*, on the other hand, is

<sup>1</sup> *League of Nations and Defence* by Sir George Lloyd (1933).



commitments to the League and her pre-1914 commitments to the Franco-Russian alliance, these people contend that "pledges to fight are no use as a means of preventing war" What they propose is in the first place close co-operation with the United States, but admission of friendly and democratic countries like the Scandinavian States to a new-fangled collective system on a limited scale Such a policy carries with it the assumption of adequate armed forces for protection against air and sea attacks from the Continent And the protagonists of this view urge the need of maintaining the League of Nations as a forum of world public opinion, as providing, in the words habitually used by the spokesmen of British foreign policy and echoed by General Smuts, machinery for "constant and organised international consultation"

3 *The Briand-Kellogg Pact as Basis* Substantially different, though superficially akin, is that school of opinion which, in the face of the present rump-League, would seek to rebuild the originally intended Society of Nations on the basis of the war-renunciation pledge of the Briand-Kellogg Pact Distinguished figures in public life, such as Lord Howard of Penrith, Sir Edward Grigg, Admiral Sir Herbert Richmond and Mr H Wickham Steed, have urged strongly that the present confusion with regard to international obligations and their meaning in practical terms should be cleared up. Starting with the assumption that Great Britain must undertake no commitments which the Dominions do not endorse, these authorities favour the calling of a special Imperial Conference to discuss the questions of security, disarmament, etc., the object being to obtain general support for the principle of non-neutrality which, they declare, is implicit in the League of Nations Covenant, and after the defection of the United States was reaffirmed in the Briand-Kellogg Pact There are differences of view as to the means of collective restraint which a "peace policy" of this kind might properly involve—some favouring an Anglo-American economic blockade, others a complete financial boycott of an offending State, and others a compound of the two But the principle of sanctions is explicitly endorsed, as well as that of non-neutrality, in contradistinction to the sections of opinion defined in sections 1 and 2 above

4 *Individual Security* Among the older generation, particularly, there is a certain section of opinion which, without possessing any conscious policy, frankly views the question of war and peace in the old terms of *individual* security Its mode of expression is naturally somewhat lacking in consistency as circumstances change As presented by Lord Rothermere and his followers in the *Daily Mail*, it is alternately a demand for "hats off to France" and "hats off to Germany" It cannot be said that there is any substantial backing in public opinion, in the broad sense, for this attitude This was seen clearly during the long-drawn-out discussion, in Parliament and



in the Press, which preceded the Report of the League of Nations Assembly with regard to Japanese action in Manchuria.

5 *The Younger Generation* The above view has been mentioned as obtaining among the Conservative governing class or older generation. The term used in the *Daily Telegraph* which is the press organ most closely associated with it is the balance of peace. Its importance lies perhaps rather in its negative consequences. A considerable section of the younger generation, re-acting strongly against so blatantly nationalist a policy sees no positive alternative in present forms of internationalism, and is thus fast becoming definitely cynical about the whole question of war and peace. The Oxford Union Debate motion reflected, more than any other sentiment, this reaction against the old bad ways. These young men take refuge in a negative pacifism, a creed of passive resistance to war and war-preparations which has nothing to do with objections on principle to violence such as those of the Quakers and similar bodies, which oppose collective security schemes of any kind on grounds of conscience.

6 *Revisionists* Another potent reason why the tract of opinion defined in section 5 has hitherto been chary of giving any support to the League of Nations as an instrument of collective security is the criticism of the post War settlement of which so much has appeared in the press and elsewhere in recent years. One has only to read the House of Commons debates to realise the peculiar twist which this whole question of collective security and sanctions has acquired in Great Britain owing to the opinion that support for any methods of defence of law and order in Europe means bolstering up French hegemony. English people who if they ever had it have lost the stern victorious attitude of 1919 and who, in general have a realistic sense of the living and dynamic, as opposed to the seemingly static in social situations are apt to find shocking any tendency to construe the acknowledged principle of the sanctity of treaties as though it implied the necessary and perpetual rightness of every treaty situation. Add to that the natural affinity between certain facets of English and German life and character and we can begin to understand the weight attaching to the idea of treaty revision as a condition precedent to any scheme of security.

7 *The "Practical" School* The number of adherents to this has unquestionably dwindled since the emergence of Nazi Germany has so complicated the outlook in Europe. But the trend nevertheless remains. It is one important element in another large tract of public opinion which we have not yet taken into consideration. The Women's International League may perhaps be said to constitute the main strength of this group. It declares in its constitution to be "for the maintenance of the



postulates that confidence alone can make possible the attainment of the declared objects of the League of Nations — co-operation, peace, security. It dismisses any idea that security can be found in alliances, pacts, and penalties, and describes it rather as "the uncovenanted grace descending on those that intend and pursue the welfare of all." If the League has been relatively a failure hitherto, the reason is, they say, that the Great Powers have never wholeheartedly sought to work through the League. The aim of world co-operation, they affirm, may be pursued in two ways

- (a) the legalistic way
  - (i) Define the crime,
  - (ii) Declare the penalty,
  - (iii) Prove the crime,
  - (iv) Inflict the penalty
- (b)
  - (i) Ask who is aggrieved, or injured, or in trouble,
  - (ii) Ask how we can find and apply the remedies,
  - (iii) Then apply them

It is the latter approach that these people prefer

A secondary element in the attitude taken up by many among the section we are now considering, is a strong dislike of anything in the nature of military sanctions. While endorsing the idea of the creation of an international air police under the auspices of the League of Nations, they insist that this air police should never be used for punitive sanctions. The international corps of aviators would make use of interceptor planes, not carrying or using destructive bombs, but confining themselves rigidly to policing functions.

8 *Christian Pacifists* There remains the not inconsiderable proportion of the nation which clings to the idea that peace will come about of itself, if a sufficient number of people preach reconciliation and brotherly love among the human beings constituting the various nations. It need hardly be said that the influential Society of Friends and another section which might be described as Christian pacifists form the main body. Naturally enough such persons see no advantage even in collective arrangements for contingent military measures, or, indeed, for material compulsion of any kind whatever.

9 *Socialism and Labour* We need not dwell here on the opposition to current ideas on collective security which comes from Left Wing Socialist Governments. Certain spokesmen of the Socialist League have affirmed that no collective action can be contemplated until the great number of States represented in the League possess Socialist Governments. They see in the entry of Soviet Russia into the League an important step in this direction, and they confidently suppose that sooner or later the National Government of Great Britain will be replaced by a Government of the Left.



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The organised Trade Unions have now rejected the idea that the general strike is an adequate weapon against war and they have now come into line with the official Labour Party Programme, which follows closely the lines of a collective security scheme, related to disarmament such as would seem to have rallied a notable volume of support from Continental States, if only as a result of the Disarmament Conference.

An element common to many of the above-described facets of national opinion is a wish that Great Britain might be left in a position to judge for herself in a given situation not only the form of collective action but also whether the occasion demands it. This traditional attitude however has never gone unchallenged. In the light both of abstract reasoning and of post War experience, there has always been an important element actively propagating the notion of prearranged collective action against the State that violates its covenants. In particular there is a section of opinion which is intent on a specific European security organisation, and which holds that to-day the risk that British action against an aggressor indicated by the League might lead to an Anglo-American war over interference with neutral trade is practically negligible.

*The memorandum from which the preceding extracts are taken finds a useful supplement in a passage from the address delivered by Lord LYTON (British Co-ordinating Committee for International Studies) at the last Study Meeting of the London Conference<sup>1</sup> Lord LYTON spoke as follows*

Just as the last war differed from all others in the number of the nations that were engaged in it in the extent of the sacrifices involved the number of those who have lost their lives so the determination not to repeat that experience after this war is greater than that which followed any of the previous wars of history

I can only speak for my own country but I am able to bring before you concrete evidence of the determination of our people in that sense. Thirty-eight societies in this country have recently organized a ballot of the entire population of the United Kingdom—a gigantic task but a task which they have accomplished.

We have already received answers written considered answers from one third of our population and 94% of the answers we have received have been recorded in favour of the collective system. That is a vote greater than has ever been recorded in this country on behalf of any single political party. I only mention it as proof that the people of my country at any rate are determined to make it clear that we will be a success."

<sup>1</sup> See below p. 114



THE COLLECTIVE PEACE SYSTEM AND BRITISH POLICY<sup>1</sup>

by W. ARNOLD-FORSTER

*Disarmament*

The Agenda of the Conference includes, under the heading "Prevention of War," "Reduction and Limitation of Armaments." An explicit reference to "supervision" or "control" might be worth adding to this heading.

No attempt will be made here to discuss this subject as a whole, but only those parts of it which most directly concern confidence and collective security.

*Permanent Disarmament Commission*

The British Government has been very cautious in its policy as regards giving to the Permanent Disarmament Commission extended powers of supervision. At the time of writing, its latest declaration on the subject is that contained in the British Memorandum of January 29th, 1934, which says

"His Majesty's Government affirm their willingness, if general agreement is reached on all other issues, to agree to the application of a system of permanent and automatic supervision, to come into force with the obligations of the Convention."

It is much to be hoped that full provisions for a Disarmament Commission with powers adequate for such supervision will be generally accepted, even if agreement is not yet reached on some of the other important issues.

*Guarantees of Execution*

As regards guarantees of action to be taken in the event of proven breach of the Convention, the British policy has been widely regarded, in England as well as elsewhere, as too vague and non-committal. The British Government's Memorandum of January 28th, 1934, after making provisions for consultation in case of breach or threatened breach of the Briand-Kellogg Pact or the Disarmament Convention, proposes Articles recognising that

"the loyal execution of the Convention is a matter of common interest to the High Contracting Parties."

and that

"It shall be the object of such consultation to exchange views as to the steps to be taken for the purpose of restoring the situation and of maintaining in operation the provisions of the present Convention." The insertion of these articles would "emphasise the inescapable duty of all signatories of the Convention to keep in the closest touch with one another, and to do whatever is right and possible to prevent or remedy any violation of so important an international treaty."

<sup>1</sup> See also, pp. 208, 305, 353.



The paper adds that

His Majesty's Government... have a right to expect that, if these provisions and pledges were solemnly entered into they would not be lightly violated, and that any violation of them would be met in the most practical and effective way by immediately assembling Governments and States in support of international peace and agreement against the disturber and the violator..."

After this statement had been published, the British Government realising perhaps that it was useless to expect France to reduce her armaments without a more precise assurance of effective solidarity than this, made enquiry in Paris as to what kind of guarantee for the execution of the Disarmament Convention would be regarded as necessary by the French Government. No reference appears to have been made in this correspondence to the plan of graduated economic sanctions which had been submitted to Mr Henderson at Geneva by M. Paul Boncour on December 5th, 1933.

Very likely the issue will have been decided for the time being before the Conference meets but in case the Conference has occasion to consider it, these two points may be noted here. Firstly it is necessary of course, to be extremely careful in any affirmation of the principle of collective responsibility for "the peace of nations" or for the Disarmament Convention, not to incur excessive risks of rejection of the Convention by the American Senate on the ground that the United States would be thereby entangled in the sanctions of the League system. Any provision which could be regarded as putting teeth into the Briand Kellogg Pact would be sure to occasion strong protests. Secondly it must be recognised that an engagement so indefinite as that proposed in the British Memorandum is sure to be regarded in France and elsewhere as offering no sufficient guarantee that loyal and effective action will be taken even by League Members such as Great Britain against the disturber and the violator. The engagement may even be interpreted as weakening by implication the existing obligations of Great Britain under Articles 11 and 16 of the Covenant.

It may perhaps be concluded that the best policy would be for the British draft to stand as a general obligation if the United States will accept it but for the League Members to supplement this by a further guarantee that in the event of proven breach of the Convention they will be prepared to co-operate in applying such initial measures of preventive pressure as the withholding of all supplies of war material from the offending State and so far as possible all financial facilities therefor.

Whatever provisions are made as to guarantees of execution these two principles should still be supported be observed. Action should be done which might have the effect of averting a just war in the nature of a preventive war, the League ought not to break its peace or authority by acting after the manner of a victor in a war. And the guarantees should only be given in respect of a treaty



that is not likely to blow up. The new sanctions would only be tolerable as a burden and reliable as a guarantee if they are given in respect of a treaty which rests on voluntary acceptance and which adequately checks armament competition and reduces the danger of war. The British Government is most unlikely to accept any "guarantee of execution" beyond that of the Memorandum of January, 1934, unless as part of a Convention which is "self-imposed and freely entered into" by the major States concerned, including Germany, (which means, in effect, that the principle of equality of treatment must be conceded on some such lines as those indicated in the German Statement of April 16th, 1934)

### *Limitation of Expenditure*

One of the most important contributions to collective security against evasion of the Disarmament Convention is the limitation and supervision of armament expenditure. No provision dealing with expenditure was included in the British Draft Convention of March 1933, (the Expenditure Commission had not completed its report when the draft was published). In June, 1933, the French Delegation emphasised that "it could not regard the British draft as the basis of a Convention so long as it did not contain at any rate the principle of limitation and supervision of expenditure," (as well as limitation and supervision of the manufacture of, and trade in, arms). The British Memorandum of January 29th, 1934, again contained no reference to the subject and on February 6th, 1934, it was stated in Parliament that limitation of expenditure had not been included because there had been no general agreement on it, there had been agreement on *publicity* and this might be a first step, but at present the technical difficulties in the way of limitation were too great. In March, 1934, Mr Baldwin stressed the difficulty of limitation, arguing that it was impossible to draw fair comparisons between one country's expenditure, with a highly paid voluntary army, and another country's expenditure with a conscript army (Mr Baldwin was overlooking the fact that no such fallacious comparison had been proposed).

The Expenditure Commission of the Disarmament Conference, found, after exhaustive study, that the limitation of *total* expenditure could be determined with a very high degree of reliability, but that for technical reasons the separate limitation of expenditure on the land, sea and air forces, or the separate limitation of expenditure on war material alone, would only be possible with a much less degree of accuracy. The Commission emphasised that armament expenditure affords no reliable criterion for comparing the armaments of one country with those of another.

Germany, Italy, and Japan asked for suspension of budgetary limitation for four or five years, and the American delegate, in view of the decision that separate limitation of expenditure on material would be



unreliable, declared that limitation as a whole was impracticable. Since that time, Italy has declared (January 4th, 1934) in favour of budgetary limitation. Thus, the opposition to limitation (as distinct from mere publicity) is now confined within narrow limits and it seems that there might now be a good chance of securing general acceptance of limitation if Great Britain would support it. On the other hand, it must be recognised that the extension of dictatorial government has lately done a good deal to reduce the reliability of published military budgets and has in Germany destroyed such democratic control of national expenditure as formerly existed.

The present position is that a complete scheme for publicity has been submitted by the Expenditure Commission, the scheme being in such a form that it could easily be adapted, if desired, for limitation as well as for publicity.

Publicity of expenditure on the lines proposed, would be of considerable value but limitation of expenditure is much needed in addition, as a contribution to collective security being the best means of checking evasion of the Disarmament Convention, and the only means of limiting armament competition in some of its most dangerous forms. It is clear from the exhaustive work of the Expenditure Commission, that no technical difficulties but only political objections, now stand in the way.

### *Arms traffic and manufacture*

The British Draft Convention of March, 1933 included no reference to the control of the traffic in, and manufacture of arms. In June 1933 the French delegation declared that it could accept the British draft as a basis only if provision were made for such control and the French Government, after advocating suppression of manufacture by private enterprise tabled proposals for comprehensive control. The British Memorandum of January 28th 1934 again omitted all reference to the subject and the French Government pointed out that no consideration had been given to the French proposals.

The British Government has declared itself opposed to the suppression of manufacture of arms by private enterprise chiefly on the ground that Great Britain could not afford to deprive herself of the national advantage now derived (or assumed to be derived) from having at her disposal that capacity for rapid expansion of armament output in time of crisis which the private industry affords. The Government has however indicated its support in principle of the valuable American project submitted in November 1934. This proposes a separate protocol for the establishment of a Permanent Disarmament Commission and a system of supervision and control of arms manufacture and traffic. (At the time of writing this project is about to be discussed at Geneva.)

The Conference might discuss the proposal that as a means of preventing those "evil effects" that were referred to in the Covenant the



manufacture and sale of armaments by private enterprise should be prohibited, and that in addition a comprehensive system of national and inter-national supervision and control should be instituted. It might, further, be considered whether any scheme of control, however thorough, will really meet the need unless it is part of a comprehensive scheme which restricts the armaments allowed to each State.

### *Civil Aviation*

No single contribution which could be rendered, through disarmament, to the true security of all nations would be so valuable as the elimination of air warfare. It has become increasingly plain that no mere limitation of air armaments would be adequate. If the Powers were limited to, say, five hundred aircraft in commission in peace time, their Air Ministries would, of course, seek to make those aircraft the most perfect of their kind and to ensure that the means of multiplying the perfected types by mass production would be ready on the word of command. The development of aviation as the greatest of destroyers would to some extent be redirected by the limitation but would continue with very little check.

Total abolition of naval and military aviation has been proposed, on certain conditions, by Russia, Germany, France, Spain, the United States,<sup>1</sup> Great Britain and others. But it is clear that such abolition will not be accepted unless it is accompanied by control, as effective as possible, of civil aviation, so as to prevent the abuse of civil aircraft for military purposes.

The British Draft Convention of March, 1933, proposed that the Permanent Disarmament Commission should work out a scheme for

(a) Abolition of military aircraft, which must be dependent on the effective supervision of civil aviation to prevent its misuse for military purposes,

(b) Alternatively, should it prove impossible to ensure such effective supervision, the determination of a minimum number of aircraft required by the signatories consistent with their national safety and obligations. Meanwhile, the aircraft of those Powers which already possessed such weapons (not including Germany) should be limited in numbers and weight.

In the British Memorandum of January, 1934, it was proposed that if agreement were not reached within two years upon general abolition of military aircraft, Germany should be entitled to possess some

Evidently the prospects of abolition of military aviation will depend very largely on the policy of the British Government as to control of civil aviation. Proposals for international ownership, submitted by France, were discussed in the Air Commission in February and March 1933, and were strongly supported by France, Spain and Belgium, but the British contribution, both as regards ownership and control, was confined to emphasising the difficulties. It appears probable that the British Air Ministry is very sceptical as to the possibility, or even

<sup>1</sup> Vide President Roosevelt's proposal of May 16th, 1933, with reference to abolition of "warplanes" within a fixed period.



the desirability of any sufficiently effective supervision" of civil aviation and the Air Minister Lord Londonderry has since declared (June 27th, 1934) that the abolition of military air forces is not a matter that we are likely to see achieved in our life-time, nor indeed in the time of many generations to come.

On June 8th, 1934, the Disarmament Conference decided to call on the Air Commission to resume its work, which had been suspended since March 17th, 1933 but on June 27th, before the Air Commission had met and before the proposals of Great Britain, France, Spain, etc. had been discussed, the British Air Minister declared that solution of the outstanding problems by an International Convention was no longer to be hoped for and that the Government had, therefore, decided to proceed at once with a programme of expansion of the British Air Force. Large expansions are being made in other countries so that, at the time of writing, an unlimited race in air armaments is in progress and the limits provisionally proposed in the British Draft Convention are being left further and further behind.

In the writer's view international ownership of the air transport lines at least in Europe, Asia and Africa, is perfectly feasible and urgently desirable for a number of reasons. It is needed not only as a means to prevent, so far as possible, the abuse of civil aircraft but also for the economic and safe extension of civil flying as a world service, and for preventing dangerous nationalistic competition for exclusive air stations and concessions. The control of small privately-owned aircraft will, of course, present problems of growing difficulty and can only be imperfectly secured by international and national regulation. True security for the nerve-centres of civilisation against such weapons as the incendiary bomb dropped from aircraft will necessarily depend to a great extent on the development of a more sensitive social sense of responsibility for the respect and preservation of the world's common inheritance.

The Conference might consider the advisability of international ownership of civil air transport and international control of other civil aviation. Consideration might perhaps, also be given to the desirability of completing a scheme of internationalisation on the lines proposed by the Spanish Government in twenty articles submitted to the Disarmament Conference on May 27th 1933.

The creation of an International Air Force has been strongly advocated by the French Government and others. The British Government is opposed to this proposal. In the writer's view the creation of an International Air Force of whatever kind would be attended by great difficulties but should be accepted on condition that national air forces are abolished, that Germany is a willing partner in the enterprise<sup>1</sup>

<sup>1</sup> The proposition of Japan is likely to be withdrawn about the end of 1934, but it must be remembered that Japan has not yet been faced by a united demand from the other Powers.



and that the function of the force is confined to preventing abuse of civil aircraft. The force should not be designed or used as a general sanction.

### *Conclusion*

To sum up the general sense of this section. It appears that, in connection with disarmament, many contributions of great value to collective security could and should be made. That the British Government's policy in regard to these contributions has been to a large extent negative, and that in some respects, though not in all, the support of the United States for provisions that would have the effect of strengthening collective security may be expected.

## RUMANIA

(Institut Social Roumain)

### RUMANIA AND COLLECTIVE SECURITY

by G. VLADESCO-RACOASSA (*translation*)

Charter member of the League of Nations, taking an active part in its organisation, Rumania saw in it from the beginning an international organ capable of ensuring the rights of all the peoples, great and small, as well as the stability essential to their progress and to their normal and peaceful development.

Article 10 of the Covenant gave it a complete guaranty of political and territorial security by the obligation assumed by all the member States to "respect and preserve as against external aggression the territorial integrity and the existing political independence of all Members of the League."

It is for this reason that, when the modification of this article was proposed, Rumania, in agreement with all the other States interested in the tranquillity and the political stability of the nations, opposed that move.

In 1924, when the Fifth Assembly of the League of Nations adopted unanimously the Protocol for the peaceful settlement of international disputes, the Rumanian Minister of Foreign Affairs, M. I. G. Duca, who was President of the Third Commission, made, in the name of his Government, the following declaration:

"Rumania considers that the question of arbitration, that of security and that of disarmament should form an inseparable whole. The Rumanian Government willingly accepts the principle of arbitration, but it asks that its sphere of application be defined.

"In regard to security, the Rumanian Government considers that



arbitration without sanctions is ineffective. These sanctions should be not only economic, but also military in character

"Rumania asks further that, so long as security cannot be ensured to States in the form of a military guaranty the regional accords remain in force.

(League of Nations, *Official Journal*  
Special Supplement No 26 Geneva, 1924).

For Rumania found itself obliged, before the project of a general security pact was even broached, to conclude regional alliances and defensives treaties, such as those signed between Rumania and Poland on March 3 1921 between Rumania and Czechoslovakia on April 20, 1931 and between Rumania and Yugoslavia on June 5 1931 — the two latter laying the foundations of the political organisation known as the Little Entente which was later placed on a basis ensuring its perfect unity

In a similar spirit, Rumania has concluded treaties of alliance and friendship with France (June, 1926) and with Italy (September 1926) and treaties of arbitration, conciliation and judicial arrangement with Switzerland (November 1926) the United States of America (March, 1929) Poland (October 1929) the Netherlands (February 1930) the Grand Duchy of Luxemburg (May 1930) and Belgium (July 1930)

Attention must also be drawn to the conclusion in 1934 of the Balkan Pact, which created an organism similar to the Little Entente — the Balkan Entente.

The attitude of Rumania has remained unchanged throughout all the phases through which the movement for the organisation of security has passed — an attitude based unswervingly on the respect of treaties and of the territorial integrity of States

M N Titulesco in a remark which he made in the course of the discussion of Article 4, Section 2, of the Protocol of 1924 stressed this principle when he said

If security is as has been said, a state of mind the first security for every country which accepts this Protocol is the knowledge that *its frontiers cannot be called in question*

It is in the same spirit likewise that must be considered the position adopted by Rumania at the Conference for the reduction and limitation of armaments at which the problem of collective security was specifically raised.

At the session of the General Commission on February 7 1933 the Rumanian representative M C Antoniadu Minister Plenipotentiary to the League of Nations made the following declaration

My delegation, as it has always declared has never been able to adopt the thesis that disarmament ought to be carried out entirely apart from considerations of security that the obligatory character of



Article 8 is unconditional, or subject to the sole condition of the existence of the present degree of security, that disarmament would automatically create security without any other guaranty. My Government considers, and I believe that it is an opinion held by many of us, that it would be extremely dangerous to undertake the experiment of disarmament without a genuine organisation of security."

Concerning the draft convention submitted by the delegation of the United Kingdom, M. Titulesco made the following remark:

"A disarmament convention which did not establish a proper synthesis among the three factors which are at present essential to the success of the Conference — the degree of disarmament, the degree of security, and the degree of application of the principle of equality —, would not correspond to the present political possibilities, and would not, therefore, be capable of realisation. The proposals made by the Government of the United Kingdom unquestionably contain some of the elements of such a synthesis. That is why the States of the Little Entente view those proposals with favour and sympathy and are ready to discuss them in the spirit of objectivity, equity and loyalty which is embodied in the present declaration."

The London Agreements between Rumania and the U S S R (July, 1933) insert in a treaty the definition of the aggressor proposed by the Russian delegation at the Disarmament Conference. The Rumanian Minister of Foreign Affairs, moreover, had declared himself in agreement with this definition at the meeting of the General Commission of that Conference on May 25, 1933.

A still more recent manifestation of the attitude of the Rumanian Government in regard to collective security is the statement concerning the relation between revisionism and security, made by M. Titulesco at the meeting of the Council of the League of Nations on December 10, 1934. The declaration of M. Titulesco was, in part, as follows:

"Has the question ever been asked how many men there are to-day who are dissatisfied with their frontiers? The number is insignificant in comparison with that of those who see in the maintenance of the *status quo* the condition of their tranquillity."

"Considering how difficult it would be to localise a war once it was begun in Europe, I have a right to ask whether revisionism, by the incertitude which it creates, really furthers peace and whether it is reasonable that the whole world should be thrown into turmoil because eight million men claim that justice, as the world understands it, is an injustice for them and that justice, as their national egoism understands it, has not yet been obtained."

"And here we touch on an essential point. Yes, we recognise that revision is a legal institution, which, provided its object is possible, requires the unanimous vote of the Assembly, including, — no one contests it —, the votes of the interested parties."



It is, consequently legal to apply to the League of Nations in order to discover whether the required unanimity and the vote of the parties are both available. But it is thoroughly illegal and contrary to Article 10 of the Covenant to compromise by propaganda the territorial integrity or the political independence of a State.

The frontier is the expression of that absolute sovereignty which is at the root of the wars from which we have just emerged. It is not by moving the boundary that the cause of peace can be served it is by gradually reducing its importance by daily practice that we shall reach the only solution of territorial problems the complete spiritualisation of the barriers between nations

But to achieve that result, it is necessary to create between nations a state of confidence which will make it possible for them to trust one another "

## UNITED STATES

(Council on Foreign Relations)

### INTERNATIONAL SECURITY

by PHILIP C. JESSUP

*The Report of Professor JESSUP drawn up under the general direction of a Committee formed by the Council on Foreign Relations New York, has already been published.<sup>1</sup>*

*Unfortunately in spite of its great interest we are unable to reproduce this volume of 157 pages here In order that our readers may acquire at least a general idea of the questions treated we give below a full table of contents (see p. 475) as well as some extracts which are of particular importance*

### Consultation<sup>2</sup>

Consultation may be defined to cover all interchanges of views between governments not excepting the normal diplomatic intercourse As thus broadly defined, it of course presents no novelty for the United States Consultation may also be defined so as to include particularly the conference method of conducting international affairs which are of interest to a number of governments In this sense also it is no stranger to the Government of the United States Current discussion, however inclines to view consultation as applying particularly to an exchange of views relative to the solution of a controversy which is threatened

<sup>1</sup> *International Security* by Philip C. Jessup Council on Foreign Relations New York 1935

<sup>2</sup> R. M. COOPER *American Consultation in World Affairs* (1934) is an excellent and thoroughly documented study of this subject and has been largely used in the preparation of this chapter



or has already broken out, and which endangers the peace of the world. It is particularly in this sense that it will be considered in this chapter.

During the post-war period, the first obligations to consult which the United States assumed were embodied in the treaties signed at the Washington Disarmament Conference in 1922. The Naval Treaty, in Articles 21 and 22, contained rather innocuous provisions for consultation. Under Article 21 the contracting Powers (the British Empire, France, Italy, Japan, and the United States) agree to "meet in conference with a view to the reconsideration of the provisions of the Treaty and its amendment by mutual agreement" in case any contracting Power believes that the requirements of its national security have been materially affected by a change of circumstances. Under Article 22 any contracting Power may, upon notice, suspend the obligations of the treaty during a war in which it may become engaged. "The remaining contracting Powers shall, in such case, consult together with a view to agreement as to what temporary modifications, if any, should be made in the Treaty as between themselves." These provisions have not aroused any particular difficulty or disagreement.

The Four-Power Treaty regarding the Pacific insular possessions of the British Empire, France, Japan, and the United States provides as follows, in its first two articles

## I

The High Contracting Parties agree as between themselves to respect their rights in relation to their insular possessions and insular dominions in the region of the Pacific Ocean

If there should develop between any of the High Contracting Parties a controversy arising out of any Pacific question and involving their said rights which is not satisfactorily settled by diplomacy and is likely to affect the harmonious accord now happily subsisting between them, they shall invite the other High Contracting Parties to a joint conference to which the whole subject will be referred for consideration and adjustment

## II

If the said rights are threatened by the aggressive action of any other Power, the High Contracting Parties shall communicate with one another fully and frankly in order to arrive at an understanding as to the most efficient measures to be taken, jointly or separately, to meet the exigencies of the particular situation

These articles were accompanied at the time of the signing of the treaty by a declaration which reads in part as follows

*That the controversies to which the second paragraph of Article I refers shall not be taken to embrace questions which according to principles of international law lie exclusively within the domestic jurisdiction of the respective Powers*

This declaration was included by the United States as a reservation at the time of ratification



The Nine Power Treaty with reference to China, provides in Article 7

The Contracting Powers agree that, whenever a situation arises which in the opinion of any one of them involves the application of the stipulations of the present Treaty and renders desirable discussion of such application, there shall be full and frank communication between the Contracting Powers concerned.

It will be noted that Article I of the Four Power Treaty contemplates a joint conference, while its second article and the Nine-Power Treaty refer merely to "full and frank communication" which could take place through the ordinary diplomatic channels without any meeting of the Powers concerned. It is the former method which is usually connoted by the current use of the term *consultation*. In retrospect, it may be regretted that the Nine Power Treaty did not create an effective procedure for joint conference. Such a step would have been a logical development of prior practice under the Open Door policy which was reaffirmed in this treaty.

In presenting these treaties to the Senate, President Harding declared

The four-power treaty contains no war commitment. It covenants the respect of each nation's rights in relation to its insular possessions. In case of controversy between the covenantee Powers it is agreed to confer and seek adjustment, and if said rights are threatened by the aggressive action of any outside Power these friendly Powers, respecting one another are to communicate, perhaps confer in order to understand what action may be taken, jointly or separately to meet a menacing situation.

"There is no commitment to armed force, no alliance, no written or moral obligation to join in defence, no expressed or implied commitment to arrive at any agreement except in accordance with our constitutional methods. It is easy to believe, however, that such a conference of the four Powers is a moral warning that an aggressive nation, giving affront to the four great Powers ready to focus world opinion on a given controversy, would be embarking on a hazardous enterprise.

"Frankly Senators, if nations may not safely agree to respect each other's rights and may not agree to confer if one party to the compact threatens trespass, or may not agree to advise if one party to the pact is threatened by an outside Power, then all concerted efforts to tranquillise the world and stabilise peace must be flung to the winds. Either these treaties must have your cordial sanction, or every proclaimed desire to promote peace and prevent war becomes a hollow mockery."

In proposing to the conference the draft of the Four Power Treaty Senator Lodge of the American delegation had emphatically stated that it contained "no provision for the use of force to carry out any of the terms of the agreement and no military or naval sanction lurks anywhere in the background or under cover of these plain and direct clauses." To make assurance doubly sure the Senate resolution of March 24, 1922, advising and consenting to the ratification of the Four Power Treaty provided that the approval was given subject to the following reservation and understanding,

The United States understands that under the agreement in the preamble of the terms of this treaty there is no commitment to armed force or alliance, no obligation to join in any defence.



Of course there was no secret about the fact that this Four-Power Treaty was entered into partly, if not chiefly, for the purpose of inducing Great Britain and Japan to terminate the old Anglo-Japanese alliance. Article IV of the Treaty expressly provides that upon the deposit of ratifications "the agreement between Great Britain and Japan which was concluded at London on July 13, 1911, shall terminate."

This first commitment of consultation assumed by the United States in the post-war period was thus definitely given as a *quid pro quo* to attain a political objective, namely, the abrogation of the Anglo-Japanese alliance. It was limited in three ways. First, it was limited geographically to insular possessions in the Pacific area. Second, it was limited in substance so as to exclude domestic questions, this undoubtedly was designed to cover the question of Japanese immigration into United States territory. Third, it was limited as to its consequences, the reiterated American explanations, reinforced by the Senate reservation, definitely excluded any implication that the obligation to consult commits the United States to take any action which it might be agreed, as a result of the consultation, was desirable. Thus, the constant zeal to retain liberty of action was expressed in this instance.

The next commitment to consult was assumed by the United States without fully realising that any such obligation had been undertaken. The text of the Briand-Kellogg Pact does not refer to consultation but in the light of subsequent American interpretations, which no other Power has been inclined to controvert, the consultative obligation is implicit in the Pact. This interpretation was not precluded by the expression of views of the Senate Foreign Relations Committee but those views did definitely preclude any obligation "to engage in punitive or coercive measures." This commitment, therefore, is limited as the first was limited in respect of possible action resulting from the consultation. It contains no restriction as to the geographical area affected. As to the subject matter of the consultation, it seems to be limited to matters arising from a breach or threatened breach of the Pact itself. As has been pointed out, the consultative interpretation of the Pact has been put into practice, notably in the two cases involving Manchuria. In the first case, the consultation took the form merely of "communication," as under the Nine-Power Treaty. In the second case it varied between this character and that of "conference" as contemplated by the Four-Power Treaty.

The third stage in the assumption of commitments to consult was the stalemate of the London Naval Conference of 1930. The story is clearly told in the Press communique of the United States delegation of March 26, 1930.

Rumour was current last evening to the effect that the American delegation had made a change of their attitude toward consultative pacts and were willing to enter into such a pact for the purpose of saving the conference. It was authoritatively denied at the headquarters of the American delegation that any change had taken



place in the attitude of the American delegation, and its attitude remains as its spokesmen gave it out several weeks ago. At that time it was made clear that America had no objection to entering a consultative pact as such; on the contrary the United States is already a party to a number of treaties involving the obligation of consulting with other Powers. It will not, however, enter into any treaty whether consultative or otherwise, where there is danger of its obligation being misunderstood as involving a promise to render military assistance or guaranteeing protection by military force to another nation. Such a misunderstanding might arise, if the United States entered into such a treaty as a *quid pro quo* for the reduction of the naval force of another Power. That danger has hitherto inhered in the present situation where France has been demanding mutual military security as a condition of naval reduction, as appears from her original statement of her case last December. If however this demand for security could be satisfied in some other way than the danger of misunderstanding a consultative pact would be eliminated from an entirely different standpoint. In such a case the American delegation would consider the matter with an entirely open mind.

This statement evoked two expressions of Senatorial opinion which are characteristic of a certain section of American opinion regarding consultative pacts. Senator Borah, the Chairman of the Foreign Relations Committee, stated:

It might be helpful, if someone in London would define a consultative pact and then place alongside of this definition a further definition of a security pact. A consultative pact is a security pact in disguise. In a security pact you state in the pact what you are going to do after you have consulted. In a consultative pact you conceal what you are going to do after you have consulted but you will be forced by the logic of the hour to do precisely what you expressly agreed to do in the security pact.

A consultative pact in which the parties would not go forward and do whatever would be necessary to be done in accordance with the realities of the situation would be a pious fraud — and a fraud which under the exigencies of the hour would be rejected.

Senator Shipstead declared:

"To agree to consult is to agree to decide. To agree to decide is to agree to act. To agree to act is to agree that we are going into the next war. They call this the road to peace. That is what they called the Triple Alliance and the Triple Entente, and the Quadruple Alliance."

On the other hand, Senator Robinson, Democratic floor leader and a member of the American delegation at London, sought to justify the attitude taken by the delegation. His views were expressed in a trans-Atlantic broadcast on April 20, 1930. According to Senator Robinson,

"No delegation asked the United States to participate in any security pact. The American delegation made it plain that the United States would not join any consultative pact which could by implication be regarded as giving security. The French said that a mere consultative pact would not take one ten off their navy."

"We took the position that if limitation of armaments is of itself a self-denying and effective measure of security, tending to promote international peace and for measures of adjustment of disputes. Where there is no such threat or disturbed condition, it is a logical and probably necessary process. But agreement for mutual limitation unless carefully safeguarded covered the vital area in the question of security tends to the formation of alliances and to the appearance of proposals for decisions which might result in alliances which are purely defensive and



" A clause providing for consultation or mutual agreement might imply some measure of obligation of all who enter into it. Failure to bind ourselves to consult or mediate in no way impairs the right of the United States to consult and give advice and even tender good offices should the occasion justify, but we should be left free to act as the friend of both parties to a dispute or at least as impartial in all controversies which do not involve American rights or interests "

Of course these arguments against consultative pacts would have been equally applicable to the provisions in the Washington treaties of 1922. They would be equally applicable to the interpretation of the Briand-Kellogg Pact which was first advanced by Secretary Kellogg on March 28, 1930, and later reiterated by Secretary Stimson. The difficulty seems to have been in this case that comments in the press had definitely led American opinion to believe that a consultative pact inserted in the London Naval Treaty was designed to afford France the security which she demanded as the price of agreement to limit her armaments and it was plausibly assumed — as Senator Robinson admitted — that the French Government would not be satisfied with an agreement merely to talk. As a result of all this furore, no consultative pact was signed, although the naval limitation treaty did contain a provision similar to that found in the Washington naval limitation treaty, providing for conference in case one party felt obliged to suspend the operation of the treaty temporarily. The Senate, however, was still cautious and consented to ratification " with the distinct and explicit understanding that there are no secret files, documents, letters, understandings or agreements which in any way, directly or indirectly, modify, change, add to, or take away from any of the stipulations, agreements, or statements in said treaty "

At this period, there was evidence in the United States of a desire to " implement " the Briand-Kellogg Pact. This may have had some influence upon the pronouncements of Secretary Stimson to the effect that consultation was already implicit in the agreement and that, therefore, no further treaty on the subject was necessary. Nevertheless, the agitation for separate consultative pacts continued. The success of the agitation is reflected in the platforms of the Republican and Democratic parties of June, 1932. The Republican party favoured " enactment by Congress of a measure that will authorise our Government to call or participate in an international conference in case of any threat of non-fulfillment of Article 2 of the Treaty of Paris (Kellogg-Briand Pact) " The Democrats wanted the Pact of Paris " to be made effective by provisions for consultation and conference in case of threatened violation of treaties "

It was in view of this unusual agreement between the two major party platforms that it was possible for Mr Norman Davis, as the Chairman of the American delegation to the Disarmament Conference at Geneva, to make his statement of May 22, 1933. In his first statement he merely announced that the United States was " willing to consult the other States in case of a threat to peace, with a view to averting con-



flict." This statement, however may be taken as suggesting a willingness to make a treaty to that effect, since it was made in the course of a speech accepting the British draft convention containing an obligation to consult. Yet Mr Davis indicated that the United States would set forth its position in a unilateral declaration of policy. Although he did not abandon the reiterated Senatorial view which opposes commitments to the use of force, his statement did propose that the United States in case it concurred in the judgment of the other Powers in determining that a State had resorted to war in violation of its treaties should "refrain from any action tending to defeat such collective effort which these States may thus make to restore peace." This commitment, although ineffective in form, was of enormous importance since it indicated that under the specified circumstances the United States would waive insistence upon its rights as a neutral in case the members of the League applied sanctions against a Covenant breaking State. The revised British draft, submitted two days later sought to register the advance in the American position as indicated by Mr Davis by provisions definitely calling for consultation in the event of a breach or threat of breach of the Pact of Paris." It is notable that this text refers to consultation between the Council or Assembly of the League and any of the parties to the proposed disarmament convention. The British draft continued by specifying the objects of the consultation which were (a) to exchange views, (b) to use good offices to restore peace if hostilities actually broke out and (c) if peace could not be restored, then to determine which party or parties to the dispute are to be held responsible." If to this be added Mr Davis's declaration the consequence of an agreement upon the State to be held responsible would be that the United States would lend the negative support of non-interference with sanctioning measures applied by the other States.

In endorsing this British draft on the same day Mr Davis emphasised that the United States Government "proposed to set forth its policy in the matter of consultation and neutral rights by unilateral declaration." He then restated the position which he had announced on May 22. He announced that such a declaration of policy would be drafted in final form previous to the signature of the Disarmament Convention and would be made at the time of the United States deposit of ratification of that convention." It would seem from this statement that the United States Government did not then contemplate putting its obligation to consult in treaty form.

The newspaper comment was as usual divided, with the isolationist papers attacking this move toward entangling alliances and the more liberal papers hailing this constructive contribution to world peace.

When Mr Davis summed up the American position at the new session of the Disarmament Conference on May 29, 1934 he reiterated the authority of President Roosevelt that the United States was willing to



consult A close reading of his statement reveals that it was then the policy of the United States "to co-operate to secure a general disarmament agreement", "to negotiate a universal pact of non-aggression", and "to join with other nations in conferring on international problems growing out of any treaties to which we are a party" This phraseology seems to indicate that it was still the intention of the United States to embody any commitment to consult in some "unilateral declaration of policy" rather than in a treaty It should be noted also that, while the declaration of May 22, 1933, referred to consultation merely in regard to violations of the Pact of Paris, Mr Davis's last statement indicates a willingness to consult in regard to the breach of any treaty to which the United States is a party It should further be noted that in this statement he was careful to point out that the United States would not "participate in European political negotiations and settlements and will not make any commitment whatever to use its armed forces for the settlement of any dispute anywhere" While it would appear that consultation regarding a situation arising from the violation of a treaty such as the Pact of Paris would be in a very real sense a "European political negotiation," the distinction made by Mr Davis is sufficiently obvious in theory, although it might not always be observable in practice

It is necessary to repeat that the American offers were contingent upon the conclusion of a Disarmament Convention At London, the United States refused to give a pledge of consultation as a *quid pro quo* for French disarmament, at Geneva, the United States demanded general disarmament as a *quid pro quo* for a pledge of consultation The shift in initiative gave the United States a considerable strategic advantage

One other treaty deserves attention here It is the Argentine Anti-War Treaty of non-aggression, signed at Rio de Janeiro October 10, 1933 The United States deposited its adherence on April 27, 1934, subject to the subsequent approval of the Senate, which was given on June 15, 1934 At the end of 1934 the treaty had been ratified by thirty nations, including twenty-one American republics and Austria, Bulgaria, Czechoslovakia, Italy, Portugal, Rumania, Spain, Turkey and Yugoslavia The first two articles of this treaty are similar to the first two articles of the Briand-Kellogg Pact Article 3 reads as follows

In case of non-compliance by any State engaged in a dispute, with the obligations contained in the foregoing articles, the contracting States undertake to make every effort for the maintenance of peace To that end they will adopt in their character as neutrals a common and solidary attitude, they will exercise the political, juridical or economic means authorised by international law, they will bring the influence of public opinion to bear but will in no case resort to intervention either diplomatic or armed, subject to the attitude that may be incumbent on them by virtue of other collective treaties to which such States are signatories

Although the word "consultation" is not used in this article, it seems perfectly clear that it would be impossible to adopt "a common



### Conclusion

In the foregoing chapters certain facts have been stated and certain events have been described and explanations have been ventured of the reasons behind the actions of the individuals or groups concerned in the events. It is very much more difficult to go still further back and to try to analyse why Americans think and feel as they do. Some analysis of these underlying forces is made in a recent study of American foreign policy prepared by ten members of the faculty of the University of Chicago under the auspices of the Norman Walt Harris Memorial Foundation. From this study the following sentences are quoted

Through much of its history the United States has had a measure of geographical isolation which has minimised the danger of external attack. Its vast undeveloped West has turned public attention toward internal development rather than toward foreign policy. Its population has been recruited from different peoples whose varied ancestral attachments might cause internal dissension if foreign politics came to the front. Its constitutional system of checks and balances has made the rapid adjustment of foreign policy difficult in normal times. These conditions have given an abnormal importance both in public opinion and in official action to traditions of foreign policy formulated early in American history by the constitutional fathers, especially by Washington, Jefferson, Madison, Monroe and the Adamses....<sup>1</sup>

These factors undoubtedly are important. It is scarcely possible in a volume of this kind to go back through the whole range of American history in order to study the attitude of the American people in regard to foreign affairs.<sup>2</sup> Of course there is no such thing as an

American attitude—there are dozens of American attitudes. To make a composite for the purpose of logical analysis serves no useful purpose, since one would be dealing with an essentially unreal thing. Three of the chief opponents of a foreign policy of the United States directed toward full co-operation with other nations in the stabilisation of peace have been Senators Henry Cabot Lodge of Massachusetts, Hiram Johnson of California and William E. Borah of Idaho. It would be foolish to attempt to explain their attitudes solely in terms of the interests of New England, the Pacific Coast and the Middle West. The attitude of Senator Lodge after 1917 was partly the result of his personal animosity to Wilson; the attitude of Senator Borah on many occasions has been largely due to his strong desire to play a lone hand; the attitude of Senator Johnson has been due partly to a personal conviction about what is good for the United States, although this conviction happily enough for Senator Johnson coincides with the policy of the politically powerful Hearst press. There are still large sections of the American people who have the unlearned man's

<sup>1</sup> *An American Foreign Policy Treaty: The United States (1934)* (P. 1, P. 17).  
Paraphrase, N. 14, 1.

<sup>2</sup> Professor Charles A. Beard, recent *U. S. A. 1776: The Founding Fathers* (1934) is a very interesting study of this kind.



respect for the printed word — "Of course it's true, I saw it in the paper" The radio is beginning to have its influence, as is indicated by some samples of the very large response to the suggestions made over the radio by a certain Father Coughlin, who is a powerful speaker and an ardent anti-internationalist

There is nothing novel about this reminder that a great welter of forces comes into play in creating that thing which we call public opinion. It is not even a unique characteristic of the United States. It probably is true that in the United States the great distances separating one section of the country from another have a very profound influence. This is heightened by the fact that in different States — Vermont, Louisiana, Indiana, North Dakota — the people differ tremendously in present interest and occupation and in the racial stocks from which they spring. Contrasted with the situation in England, for example, the well educated people of the United States, by and large, are poorly informed even about the affairs of their own national government. This has become much less true in the last few years, again partly due to the radio and partly due to the fact that the economic depression has so closely affected all sections of the population that they have become very much alive to what is being done in Washington to bring about an improvement. In addition, there is the real genius of President Roosevelt for appealing to and enlisting the interest and attention of the country. As indicated above, there has also been a great increase in the general interest in international affairs, due largely to the activities of numerous private organizations. However, not a few visitors to the United States have been startled by the quite extraordinary ignorance of well educated American people on questions lying within the field of American foreign policy. This ignorance is not due to native inability to grasp the subject but to a great indifference to it. It may be that this attitude is in process of transformation, certainly much has been done to bring home to the American public the inevitability of American interest in world affairs. A recent example of a very influential force in that direction is the pamphlet written for the Foreign Policy Association and World Peace Foundation by Mr. Henry A. Wallace, the Secretary of Agriculture, under the title "America Must Choose." This pamphlet enjoyed an enormous circulation and was widely quoted. In it, Secretary Wallace weighs the *pros* and *cons* of a policy of national isolation as against a policy of "world neighborhood," reaching the conclusion that the policy of complete isolation is neither wise nor possible for the United States.

In some sections of the American people there is undoubtedly a very strong respect for tradition. The political stump speaker still feels he is on safe ground when he invokes the authority of the fathers of the Constitution and particularly if he can quote (usually out of their context) the words of George Washington or of Abraham Lincoln.



Although economic necessity has influenced many people to draw away from this devotional attachment to traditional principles such as those embodied in the Constitution the traditional respect is not easily obliterated.

If the great mass of the American people could be interrogated for the purpose of ascertaining their stock of information on the foreign policy of the United States, the answers would probably reveal that two things immediately came to their minds. The first of these would be Washington's Farewell Address and the second would be the Monroe Doctrine. Both of them would be roughly interpreted as meaning the same thing namely that the United States should stay at home and mind its own business, not participating in European quarrels or difficulties and not allowing Europe to interfere in our own. A very substantial number of citizens can always be rallied to the support of these notions without regard to their historical accuracy. It is necessary to set off against this section of the American public those who have become somewhat internationally minded. Many of these persons are identified with what is loosely called the peace movement in the United States. These groups are on occasion politically powerful, as was the case in connection with the Briand-Kellogg Pact as described above. They lack the fundamental element of the political effectiveness of an organized minority in that as a whole they do not feel so strongly about particular questions of foreign policy as to make them willing to cast their votes solely on that issue. When great numbers of the women of the country were organized in a campaign to effect the repeal of the Eighteenth Amendment which prohibited the manufacture and sale of alcoholic liquors they were able to induce their supporters to set this issue up as the test to be applied to every candidate for election to the federal Congress or to the State legislatures. The peace movement including very many of the same individuals has never been able to achieve that kind of political effectiveness. With a few exceptions people will not vote against a candidate for the United States Senate because of his attitude toward for example the World Court but will allow their vote to be affected either by general party considerations by the comparative merits of the rival candidate or by the stand of the candidate on some question which affects them more closely. There have been individual instances in which a Senator's stand on foreign policy has become a real issue in an election. In some of the best known instances of this sort the reason why this issue was prominent was that some locally powerful group like the Ku Klux Klan or the Hearst papers were seeking the defeat of an individual who had expressed liberal views on international subjects and who was being opposed by so-called "one hundred per cent Americans." There have been many other cases in which a general party policy on foreign affairs has influenced the voters but it is very difficult in the United States to cut out as



party lines in regard to individual candidates solely on the ground of that candidate's attitude toward any question of foreign policy

There is a common belief that, with the improvement in communications throughout the world and with the increase in American tourist travel abroad, familiarity with foreign peoples and countries will bring about a change in the more or less provincial isolationism of American thought. It is true that many of these factors have increased the practical necessity for the United States to deal with international problems but the same factors have not to any great extent had the resulting effect on public opinion which was anticipated

It would be a mistake to suppose that these aspects of isolationism and provincialism are peculiar to the United States. They exist in many other countries. Yet in European countries, geography, proximity, history, personal recollections of wars and invasions, compulsory military service, and many other factors have made larger sections of the population more keenly conscious of the problems of foreign policy. In the United States there seems to be a trend toward a more international point of view but this trend should not be mistaken for an already complete transformation

There are a great many people in the United States who would like to see American foreign policy framed in accordance with the dictates of generosity and humanity. As individuals, Americans are a generous and philanthropic people but the reactions of the mass do not equal the sum of all the parts. There is always a ready response in the United States to pleas for the foreign sufferers in earthquakes and floods. As individuals, the American people might not hesitate to contribute fifty cents *per capita* for the relief of suffering foreign peoples, but they object most strenuously, as a nation, to being taxed five cents *per capita* for the relief of foreign debtors. This distinction between the individual and the mass psychology is again not peculiar to the United States

It may as well be frankly realised that national policy is determined by self-interest. It is very much to the self-interest of many European States to have the American Government become a member of the League of Nations. The ultimate policy of the United States will not be determined on the basis of what is good for other peoples but what is good for its own people. This is the controlling motive which actually dominates all governments. It is quite properly argued that the United States benefits from anything which contributes to the economic or political stability of the world as a whole. It is extremely rare, however, for governments to act upon the basis of such indirect and long-term returns, because public opinion, which is not so far-sighted, will not support them. Whatever may be the views of this or that section of American public opinion, the United States Government will not move far in the direction of international co-operation unless and until it is convinced that such a policy offers the greatest



advantages to the United States. Even if the individuals composing the Government at any one time reach this conclusion, they cannot advance far unless a considerable body of opinion through the country is converted to the same point of view.<sup>1</sup>

### *What will the United States do?*

Assuming that the United States is not prepared to accept in the form of binding treaty obligations, commitments of future action comparable with those which the members of the League have assumed and are apparently willing to assume, the question remains whether in time of crisis the United States will act in a way which will further or retard international efforts for the preservation of peace. The crucial test is provided by a situation in which the members of the League are desirous of taking action under the sanction articles of the Covenant. Anticipation that the United States may take a stand which would nullify or seriously interfere with the action of the League is frequently alleged to be one of the chief obstacles to the effective operation of the Covenant. In analysing this situation it seems desirable to devote attention first to the problem of neutrality.

### *Neutrality*

The policy of neutrality is firmly embedded in American thought and practice. The American people are inclined to regard it as a traditional American doctrine in the same category as the Monroe Doctrine. They think of it chiefly as synonymous with keeping out of war and are not much aware of the wide difference between the legal impartiality which neutrality exacts and the factual partiality which it permits. There is little realisation that this policy of neutrality which was adopted by the administration of President Washington primarily as a means of avoiding embroilment in the French Revolutionary Wars resulted in America's limited war with France in 1798 and the War of 1812 with England. This consequence of the neutrality policy was due to the struggle for the defence of neutral rights against belligerent interference.

When the World War broke out in 1914 the United States turned to its policy of neutrality as the only alternative to war. The usual

The increasing power of the forces tending to develop a uniform American opinion on international affairs is notable. In 1919 the writer as Chairman of a committee of the Fourth Conference of Teachers of International Law and Related Subjects, made an analysis of the increased attention devoted to international law in American colleges and universities. The results found in the *Proceedings of that Conference* at p. 231 f. The report showed that between 1911 and 1919 the number of student registered for courses in international law had increased by 32. The number of courses in international law during the same period had increased by 48%. Those in international relations had increased by 100% and those in international law by about 34%. The activities of the American Association of Teachers of International Law are reported in *The Study of International Law* by the A.A.T.I.L. (1931).



conflict over neutral rights began. In 1916, President Wilson was fearful that Allied interferences with neutral American trade might lead to a definite breach with the Allies. It was partly due to the fact that the German submarine policy aroused even greater opposition and anger in America, that the United States entered the war on the side of the Allies.

When the war ended, the United States did not seek to secure an agreement on neutral rights because President Wilson believed that "neutrality is no longer feasible or desirable where the peace of the world and the freedom of its peoples are involved." The continuation of the old notion of neutrality was deemed inconsistent with the theoretical bases of the League Covenant. Nevertheless, the United States did not in practice abandon the law of neutrality nor has this law been abandoned in the practice of other States of the world.

During the Russo-Polish War, Germany declared her neutrality in 1920, and on August 17, 1923, the Permanent Court of International Justice discussed Germany's neutral duties without any suggestion being made that neutrality was no longer a possible status.

At the Barcelona Conference on Freedom of Transit, convened under League auspices, in 1921, there was considerable discussion regarding the applicability of the proposed convention in time of war. The final statute contains in Article 8 the following provision: "This statute does not prescribe the rights and duties of belligerents and neutrals in time of war." This text was adopted after vigorous debate, in which all the delegates who participated seemed to recognise that the problems of neutral and belligerent rights were still unsolved. Mr. Van Eysinga did indeed refer to the Covenant as changing the outlook toward war, but he did not deny the legal possibility of war and of neutrality. A sub-committee proposed an article by which the conference would have requested the League to call another conference to draw up "new conventions intended to govern the rights and obligations of belligerents and neutrals in time of war." This suggestion was not accepted, partly perhaps because Sir Cecil Hurst noted that they were then too close to the war to seek to make a regulation for the future.

Article 15 of the Statute on the Régime of Navigable Waterways of International Concern, drawn up at the same period, contains an identical provision.

In the following year, 1922, Great Britain, Belgium, Czechoslovakia, France, Germany and Italy signed the Convention on the Elbe. In Article 49 they make provision for "*les droits et devoirs des belligérants et des neutres*."

Article 6 of the Nine-Power Treaty regarding China signed at the Washington Disarmament Conference on February 6, 1922, provides "The Contracting Powers, other than China, agree fully to respect China's rights as a neutral in time of war to which China is not a party,



and China declares that when she is a neutral she will observe the obligations of a neutral

In the next year, 1923 there was signed the Convention Relating to the Development of Hydraulic Power affecting More Than One State. Article 9 copies the terms of Article 8 of the Statute on Transit referred to above. The same is true of Article 32 of the Statute annexed to the Convention on the International Régime of Railways, signed at Geneva on December 9 1923. One may also refer to the so-called neutrality treaties under which the parties undertake 'to remain neutral or to observe neutrality in certain circumstances. Such for example, are the German Soviet treaty of 1926 the Austrian-Czech treaty of 1921 the Yugoslav Italian treaty of 1924, and the Lithuanian Soviet treaty of 1926. In connection with the last named treaty the Lithuanian Government declared that its League membership can not encroach upon the desire of the Lithuanian people to strive for neutrality a policy which corresponds best with her vital interests. An elaborate Convention on Maritime Neutrality was adopted at the Sixth International Conference of American States in 1928 and has been ratified by Bolivia, Nicaragua, Panama and the Dominican Republic, and by the United States on February 6 1932.

The Argentine Anti War Pact of 1933 calls for action by the contracting parties, in their character as neutrals.

Attention has already been drawn to the position taken by Secretary of State Stimson, that the Briand Kellogg Pact had so altered the legal status of war that the old system of neutrality no longer exists. In this connection, attention should be called to the fact that upon the conclusion of the Pact of Paris, the French and Czechoslovak Governments stated their understanding that the Pact did not conflict with *the treaties of neutrality*. This understanding of the two Governments was accepted by Secretary of State Kellogg in his note of April 13 1928. It should also be noted that the ratification of the Havana Convention on Maritime Neutrality was completed by the United States four years after the Briand Kellogg Pact came into force.

The present administration apparently does not accept the thesis that neutrality has been done away with. Recent press dispatches have announced that the State War and Navy Departments are at work upon proposals for the elaboration of a new American neutrality policy. No official announcement has yet been made regarding the nature or scope of such proposals. It nevertheless seems clear that the United States will insist upon the continuance of the exercise of neutral rights.

In his statement of May 1933 Mr. Norman Davis indicated that the United States would be willing to waive its neutrality with respect to holding protection from American citizens who sought to trade with an aggressor if the United States concurred in the general conclusion of the members of the League that a particular State had resorted



to war in violation of its treaty obligations. The policy of the United States Government, as announced by Mr. Davis, was contingent upon the conclusion of a general disarmament convention.

It may be unnecessary here to argue further the point that neutrality is still a legal possibility under the Covenant of the League and the Briand-Kellogg Pact. The brief list of illustrations of State practice since the Covenant has come into existence seems to indicate that governmental opinion shares this point of view.

The question remains whether the members of the League will be willing to offer the United States some *quid pro quo* for the abandonment of neutral rights in case of universal agreement upon identifying an aggressor. Two situations may be contemplated. First, the members of the Council may not be able to reach a unanimous agreement. In this case, it would appear that League members would be free to proclaim their neutrality and the United States would support neutral rights. Second, in the course of an attempt to reach agreement upon this subject, the League may appoint a commission of investigation comparable to the Lytton Commission. Judging from the experiences in the Manchurian, Chaco, and Leticia disputes, six months or a year or more might elapse between the date of the appointment of such a commission and the date of action upon its report. It would appear that neutrality would be a possible status during this interval.

No matter whether such situations are or are not theoretically desirable, they are legal and practical possibilities which should be faced. It seems clear that in both of these situations, the United States would be inclined to insist upon its neutral rights.

Some agreement might be reached in regard to neutral trade during the interval which might elapse before a decision was made regarding the identification of an aggressor. It might then be provided that if the United States independently concurs in a unanimous judgment regarding the aggressor, the United States would no longer insist upon protecting the trade of its nationals with such aggressor State. The agreement could then further provide some assurance for the security of neutral trade, at least among the neutrals themselves, in case there should be a failure of agreement upon identifying the aggressor. From the point of view of the United States, it would be necessary to go still further and to provide that even if the members of the League were unanimous in their judgment but if the United States did not concur in the judgment, the United States would place a total embargo upon shipments to all belligerents but would be free to continue trade with all neutrals. For this, perhaps, it would be useful to have a global agreement that States participating up to a certain extent in the imposition of sanctions but not full parties to the conflict, could be considered as "neutrals." Under the law of neutrality as it now exists, it might be illegal for the United States unilaterally to act upon this assumption. This legal difficulty could be avoided if there were an advance agree-



ment upon the point, just as the members of the League are probably now protected by the provisions of the Covenant against any claims of other parties to the Covenant.

It is believed that if some agreement could be reached upon American neutral rights in these situations, the United States might be willing to accept such agreement as a *quid pro quo* for the two points in the Davis declaration, namely consultation and waiver of neutral rights in case of unanimous agreement.

In view of these facts it would seem desirable and feasible for the members of the League to convene in conjunction with the United States, a conference for the elaboration of a convention dealing with the subject of neutrality and neutral rights. The experiences of some three hundred years suggests that any attempt to proceed along the traditional lines followed at the London Naval Conference of 1909 would be productive of no satisfactory results. The crucial point is the definition of contraband. The experience of the World War and of all prior wars indicates the difficulty of reaching any lasting agreement on this point. Certain possible alternatives may be suggested.

Mr Charles Warren, who as Assistant Attorney-General of the United States during the World War was charged with the enforcement of American neutrality laws, has advanced certain proposals. One of Mr Warren's suggestions is that agreement should be reached upon the principle that contraband goods should not be subject to confiscation but that a belligerent would be permitted to requisition any captured neutral cargo paying the price which the cargo would have brought at its destination. This proposal is an adaptation of the doctrine of preemption which has been practised from time to time since the seventeenth century. A notable example of its use is found in the practice of Great Britain during the French Revolutionary and Napoleonic Wars. Such a policy has been adopted in the past as a concession to neutrals and for the purpose of meeting objections against the extension of contraband lists. Mr Warren has made an estimate of the probable cost to belligerents of such a policy of requisition or preemption and the cost does not appear to be excessive when considered in relation to general war expenditures. The difficulty with such a plan is that when one Power has command of the sea such an adjustment does not give satisfaction to the opposing belligerent and such opposing belligerent would probably continue to seek to intercept and destroy neutral cargoes bound for the ports of the dominant sea Power.

Mr Warren suggests as an alternative that the United States (or any other neutral) should embargo the shipment of any goods which either belligerent listed as contraband of war. As a further alternative the United States might establish an export quota equal to the amount of such articles which the United States exported to each belligerent during an average of five normal pre-war years.



"The benefit of such a policy would be," Mr Warren says, "that it would directly penalise expansion of contraband lists. For, any article added to its contraband list by a belligerent would be at once placed on the quota list by the United States, and its export not only to neutral countries but to the belligerents themselves would be restricted to a pre-war export amount. If a belligerent nation considered that any article was of sufficient war-aid to its enemy to be placed on its contraband list, it would find that the United States would equally consider such article of war-aid to *both* belligerents and would restrict its export to both. Thus, for instance, if England should place copper on her contraband list, exports of copper from the United States to England would only be permitted to the extent of the normal shipment to England in pre-war years, and similarly exports of copper to England's enemy and to the neutral countries would be so limited to their pre-war normal in amounts."

Yet this suggestion, ingenious as it is, is faced with a grave difficulty. If the scheme is tested against the situation existing during the World War, it seems obvious that the tendency of the Allies would have been to narrow their contraband lists in order to receive unlimited exports from the United States. On the other hand, the Central Powers, being unable in any case to obtain the shipments, would have been inclined to extend the contraband lists in order to force the United States to establish export quotas and thus to restrict the shipments to the Allies.

Historically, the principal difficulties arising between neutrals and belligerents result from belligerent interference with neutral commerce at sea. This is the problem which must be directly attacked. During the World War, the Allies entered into arrangements with private or semi-private organizations in various neutral countries whereby exportations were governed by agreements that the goods would not be re-exported to the Central Powers. Shipments coming within the scope of these agreements were covered by certificates of Allied officials and these certificates sufficed to pass the ships when visited by Allied warships. In the seventeenth and eighteenth centuries, attempts were made to secure free passage by means of certificates issued by neutral officials but this device was unsatisfactory because the belligerents lost confidence in the honesty of neutral certification. Joint certification by both belligerents and neutrals would tend to obviate this difficulty.

In itself, such certification would be insufficient. In the past, neutrals have been accustomed to insist not only on the continuance of their normal peace-time trade but upon sharing in the abnormally increased trade with belligerents, brought about by war conditions. If neutrals would yield insistence upon this war-boom trade, belligerents might agree on a workable plan to permit uninterrupted traffic between the neutrals themselves. Such a plan would involve total embargoes upon trade with all belligerents. While such a plan might possibly



be acceptable to the United States, it would involve grave risks for small Powers near the scene of hostilities. Such States might be subject to attack by an aggressive belligerent in case they possessed resources urgently needed by the belligerent and yet not available to it through normal trade channels. The probability that such a plan would lead to the continuous accumulation of war stocks thus hindering disarmament, may also be noted.

Any general convention on neutrality concluded in time of peace should provide for the solidary attitude of neutrals as contemplated in the Argentine Anti War Pact. That treaty does not contemplate an 'armed neutrality'—intervention in the conflict is expressly precluded. But a united front especially in matters of trade and finance would greatly enhance the likelihood that neutrals would be able to induce the belligerents to respect their treaty rights.

It should be noted that the Senate of the United States has so far indicated its unwillingness to approve the imposition of unilateral embargoes based upon presidential determination of an aggressor. In the Winter of 1927-28 discriminatory embargo resolutions were introduced by Senator Capper and Representatives Burton, Fish and others, but no action was taken upon them. In 1933 a resolution authorising the President, in his discretion, to lay a discriminatory embargo on shipment of arms to one of the belligerents passed the House of Representatives but was dropped after the Senate amended it to make the embargo apply impartially to all belligerents.

Since 1912 the President has had authority to place embargoes on the shipments of arms and ammunition to the republics of Latin America whenever he should determine that a state of civil war or revolution existed in such countries. The President has frequently exercised this authority. In 1922 the authority was extended to embrace China. When in May 1934 the League sought to secure embargoes on the shipments of arms and munitions to Paraguay and Bolivia the United States took the lead in putting such an embargo into effect. The embargo applied equally to both belligerents. On January 16 1935 the League decided that Paraguay was continuing to wage war in violation of its obligations under the Covenant and thereafter the embargo remained applicable to Paraguay only. Without further authorisation from Congress—which probably could not be obtained—the President of the United States does not have the power to support this action by raising the embargo against Bolivia. Due to geographic and other factors the inability of the United States to co-operate in this instance will probably not prove to be of great importance. In the case of a war between great Powers and involving naval operations the non-co-operation of the United States might be considered a serious interference with League activities.

However the imposition of sanctions by members of the League would not be greatly hampered if the United States imposed an embargo



on both belligerents. In such a case, all trade by American nationals with either belligerent would be illegal under American law and presumably the United States Government would not be inclined to protect those of its nationals who might seek to trade in defiance of the prohibition. No help therefore would flow from the United States to the aggressor. While the United States would also not allow the innocent belligerent to purchase or borrow in its markets, this deficiency could be supplied by the exporters and bankers of the sanction-applying States. The United States then would be sacrificing to commercial rivals, a very lucrative trade. American exporters would not fail to stress this feature in an endeavour to have the embargoes lifted. If the maintenance of the embargoes would contribute to keeping the United States out of the war, the price would not be too high.

In the imposition and maintenance of such embargoes, attention would have to be paid to the old problem of continuous voyage or ultimate destination. If the United States would earnestly seek to avoid becoming embroiled, it would have to face the difficulty by restricting shipments to other countries. The aggressor State, if a naval Power, would certainly not allow the United States to evade the consequences of its embargo policy by shipping to the sanction-applying States goods which could be re-exported to the aggressor's enemy. Perhaps the difficulty would be insuperable because of domestic political opposition to so great a loss of American trade as would be occasioned by further extension of the embargoes. Those nationalistic elements of the population which now deny the importance of foreign trade, would be among the first to cry out against an abandonment of lucrative neutral rights. Perhaps agreement could be reached in advance covering such a situation, by permitting the United States to use a quota or rationing system with guarantees against re-export. It would be necessary to have clear agreement in time of peace on such a principle if one would avoid the application of the doctrine of the British Prize Courts during the World War, under which cargoes *en route* from one neutral to another were declared confiscable if it could be argued that the consumption of those goods in the neutral country of destination would release other goods for shipment to the enemy.

If the United States refused to place an embargo on shipments to either belligerent, the conflict with the sanction-applying States would be obvious. It should be repeated that we are here considering cases wherein the United States is unwilling to discriminate against one of the belligerents.

Nothing is clearer than the fact that these problems should be faced and settled in some way before the time of crisis arises. Once war breaks out, agreement will be practically impossible.



*Consultation*

Regardless of any new consultative pact which might be concluded, the present commitments of the United States are sufficient to make it reasonably certain that it will not refuse to consult with other States through League channels or otherwise, when an international crisis again arises, provided such crisis seems to have some immediate interest for the United States. It is not to be expected that the United States would immediately consult on such a question as the recent controversy between Yugoslavia and Hungary relative to the latter State's responsibility for the assassination of King Alexander. It is by no means impossible that there should develop more efficient means of consultation on such a question as the war in the Chaco. The advantage of specific treaty provisions lies in the creation of definite procedures. A disadvantage of proposing such a treaty lies in its possible rejection by the Senate of the United States since such rejection might deter the President from continuing a policy of consultation even apart from treaty commitments. The recent vote on the World Court Protocols indicates that the support of party platform approval of consultative pacts is by no means decisive.

Senatorial approval of consultation, within well-defined limits may be deduced from the approval of the Argentine Anti War Pact and from the Joint Resolution of Congress of May 28 1934.<sup>1</sup> This was the resolution which authorised the President to impose an arms embargo on Bolivia and Paraguay "if... *after consultation* with the Governments of other American Republics and with their co-operation as well as that of such other Governments as he may deem necessary" he found that such action "may contribute to the re-establishment of peace." Regardless of treaty commitments the Congress might again pass a similar resolution should the occasion arise.

A general treaty obligation like that expressed in the Four Power Pact or implied in the Briand-Kellogg Pact might give some added assurance to other Governments but probably would not greatly affect the actual practice of the United States Government. If such assurance is desired, a unilateral declaration of American policy as suggested by Mr Davis might be adequate. There can be no doubt of the President's power to make such a declaration or to act upon it.

It may be suggested also that the present peace machinery of the world is defective in that it fails to afford a means for immediate investigation of factual situations. The League has frequently appointed investigating commissions such as the Lytton Commission. The Japanese attack on Mukden occurred on September 18 1931. It was not until December 10 that the Council adopted a resolution calling for the appointment of such a commission. It was not until January 14

<sup>1</sup> Yet deduction is a logical process and it is not unreasonable to expect that the future action of a political body



1932, that the personnel of the commission was finally approved and the commission did not reach Japan until February 29. In the Shanghai affair, on the other hand, the League acted with great rapidity. The serious fighting began on January 28, 1932. Two days later the Secretary-General of the League proposed that a committee composed of official representatives of the States Members of the Council of the League, should be formed to report on the situation. The United States was asked to co-operate and it did so without, however, permitting its Consul-General to become an actual member of the committee which began to function almost immediately.

In the Greco-Bulgarian frontier incident of 1925, the Council appointed a commission of investigation seven days after the first outbreak. The report came before the Council about five weeks later. In the recent frontier dispute between Abyssinia and Italy, which apparently turned largely on controverted questions of fact, no investigating commission was appointed.

Further detailed analysis of the precedents seems to be unnecessary. Within the present framework of the League, improvement is possible. The Permanent Advisory Commission for Military, Naval and Air Questions of the League Council earnestly called attention to the problem in its report on the draft regulations for the execution of Article 4 of the General Convention to improve the Means of preventing War. This report said :

The Commission expresses the opinion that it is essential that the experts who are to serve on the commissions of inspection should be appointed as quickly as possible when their services are required. The Commission was unanimous on this point. I am sure all my colleagues will agree with me in holding that the Commission's anxieties are perfectly justified, and in expressing the firm conviction that Governments will at all times be willing to sanction with the utmost despatch the appointment of one of their nationals as Commissioner.

If a plan for permanent investigating commissions could be drawn up, the United States might be able to co-operate, provided such commissions were not made to appear as purely League bodies. The American Government has shown a willingness to agree to the appointment of a Permanent Disarmament Commission with broad powers of investigation regarding observance of conventions on disarmament and traffic in arms. It has entrusted broad powers of inquiry to commissions of conciliation set up under bipartite and multipartite treaties. It would seem feasible to include in a general consultative pact, a provision for permanent investigating commissions. The regulations recommended by the League Council's committee for the execution of Article 4 of the General Convention to improve the Means of preventing War, do not meet the needs which have just been suggested. Those regulations look merely to expediting the Council's procedure for appointing *ad hoc* "commissions of inspection."



*Conclusion*

The 'stabilisation of peace' is not synonymous with "freezing the *status quo*". International relations are not static. Existing conditions and situations are not perfect. Possibilities of peaceful change are essential to collective security. That logic which traditionally characterises French thought, demands an alternative means of obtaining security before France will abandon reliance on arms. Peoples and Governments which are convinced of the righteousness of their demands for a change in conditions will not abandon ultimate resort to the sword, unless they are convinced that the pen will be an effective instrument of reason. The shadows of the World War still adumbrate the next war.

The United States sat at the Versailles council table to arrange the post war settlements. Would it again meet in consultation to revise that settlement? It is most unlikely. The United States is not yet prepared to play a full rôle in world affairs. It is useless here to weigh praise or blame. It is equally useless to ignore the fact. There is much that Europe could do to make more smooth the path of peace without reference to the action or inaction of the United States. The solutions of problems of minorities, of *intermittent* of the size of land forces and the rearmament of Germany of spheres of influence in Africa — these and many others do not wait upon the United States. But tariffs, foreign exchanges, and all barriers to trade, naval armaments and the whole political problem of the Pacific and Far East — these and many other subjects are within the realm of vital American interest and probable American action.

It is impossible, but if possible, futile to lay the blame for the disorganization of peace at the door of any one Government. All national houses are made of glass, equally shatterable by the accusing stone. It is more pertinent to ask, what may be done? In this volume, an attempt is made to indicate what the United States may contribute to collective security. The United States is not on the defensive. Its policies, like the policies of other Governments are based on enlightened self interest. As much as any other Government it will make sacrifices for peace commensurate with its appreciation of the dangers which may thus be avoided. If Governments be thought of in terms of individual statesmen, it will often be found that those persons are willing to move much faster and much farther than their legislative bodies and masses of less well informed citizens will permit them to move. In other instances it will be found that they hold back against the pressure of liberal opinion at home.

A theory of splendid isolation has long dominated American thought. An appreciation of international interest and solidarity grows but slowly. There are few countries in which there exists a more deeply rooted and sincere popular antipathy to war. When the



people of the United States are convinced that a particular policy will substantially contribute to the stabilisation of peace, that policy will sooner or later be followed. Like the peoples of other countries, however, Americans are quick to resent the suggestion that they alone should make sacrifices to the cause of peace. They are not now convinced that other nations are prepared to make sacrifices comparable with some which they themselves have been asked to make.

In Europe, certain aspects of foreign policy are accepted by the people of the various States as permanent or long-term propositions. Treaties which fall in line with such policies are readily concluded. In the United States, no comparable tradition exists, and each new treaty proposal is viewed with suspicion.

Certain contributions in treaty form the United States has now made or stands ready to make, and these may be recapitulated:

- Conclusion of disarmament conventions applicable to land, air and sea forces

- Conclusion of a convention to regulate and limit the traffic in arms

- Conclusion of some general agreement regarding neutral rights and duties

Contingent upon the conclusion of a disarmament convention or other general contribution to the stabilisation of peace

- Conclusion of a general non-aggression pact, embodying the pledge to move no armed forces across the frontier. Such a pact must not contain provisions for sanctions or other action to be taken except upon decisions reached independently by the United States at the time.

- Conclusion of a consultative pact which contains no advance commitment regarding the actions to be taken as a result of consultation. Such a treaty might contain detailed provisions for procedures of investigation and conference.

- Inclusion in a pact of consultation or non-aggression of the non-recognition doctrine and an undertaking to withhold protection from American citizens aiding an aggressor, if the United States independently concurs in identifying such aggressor.

- Continuation of the practice of concluding arbitration and conciliation treaties which do not provide for compulsory reference and which leave the parties free to accept or reject the recommendations of commissions of inquiry or conciliation.

With the limitations indicated, there seems to be no insurmountable obstacle to concluding a general peace pact which would embody all of these provisions. Such merging and consolidation would be in line with recent League practice as exemplified by the General Act for the Pacific Settlement of International Disputes of 1928, and the



General Convention to strengthen the Means of preventing War of 1930 There might be real utility in thus universalising such obligations, and this step would not interfere with the acceptance of greater obligations by those Governments willing to accept them

For the sake of emphasis, it may be desirable also to recapitulate the obligations which the United States is not now ready to assume

It will not pledge itself in advance to use its forces for the purpose of applying sanctions or enforcing treaty obligations.

It will not pledge itself to entrust to any international body the final decision regarding a breach of obligations or the coming into existence of any duty to act in any way An exception may be noted in regard to the possible establishment of a Permanent Disarmament Commission and in respect of the International Labour Organization.

It will not wholly abandon its claims to the rights of neutrality although it will seek agreement upon these rights and their application

Even in the absence of additional treaties on these various subjects the United States will probably continue to consult on occasion when it believes its interests will be furthered by such action. It may impose embargoes on shipments of arms and munitions to both belligerents in case war breaks out. It will probably insist upon observing its duties under the law of neutrality and may assume additional obligations within the scope of that law It will also insist upon protecting its neutral rights with the possible exceptions already noted. It is quite possible that some assurance of such action being taken might be given in the form of unilateral declarations of policy

It cannot be said that this is a wholly negative attitude. The United States is indeed ready to make substantial contributions to the stabilisation of peace. Domestic difficulties make it impossible for the Government to consider going farther International difficulties — particularly in relation to disarmament — have so far made it impossible for the Government to go as far as it is willing to go

If the other Governments of the world believe that peace could be further stabilised by the acceptance of existing American offers express or implied, the road is open and they may take the initiative.

### *Note on AUSTRIAN OPINION on Collective Security*

*It should be mentioned here for the reader's information that besides the memoranda submitted by Americans, British Canadian French and Rumanian institutions extracts of which have just been quoted the *Kunstler Akademie in Vienna* also presented at the Conference a publication entitled "Austrian opinion on Collective Security"*

*This memorandum is composed of a series of individual answers to the following questionnaire:*

1 Do you believe in the possibility of the entire prevention of war between the various countries? What are the reasons for your opinion?



2 Is it your opinion that measures can be taken and carried out by an organised community of States, in such a way as to settle many, if not all, international disputes in a peaceful manner?

3 From the point of view indicated under 2, how do you appraise the following?

(a) The rules governing the League of Nations, especially Articles X, XI, XV, XVI and XIX of the Covenant, and the application of sanctions by the League,

(b) the Kellogg Pact of 1928,

(c) the Geneva Protocol of 1924

4 Do you consider that a European Court of Revision, separate from the Permanent Court of International Justice, and pronouncing decisions based on equity, would be effective in disputes where both parties do not desire a settlement according to the existing principles of International Law?

*The answers that have been communicated to the Conference originated with the following scholars*

Professor Carl BROCKHAUSEN, Baron Constantin von DUMBA, Dr Max FREIHERR HUSSAREK VON HEINLEIN, Dr Gottfried KUNWALD, Dr Richard REISCH, Alois Prince SCHÖNBURG-HARTENSTEIN, M. Heinrich Ritter von SRBIK, M. Ernst Ritter von STREERUWITZ, Dr Gustav WALKER

*It has been found impossible either to make a selection from among these replies or to give a general idea of these documents by way of extracts and to our deep regret the limited scope of the present publication does not allow us to print them in extenso*







## CHAPTER II

# FUNDAMENTAL PRINCIPLES







## A. — MEMORANDA

### CANADA

(Canadian Institute of International Affairs)

#### THE ORGANIZATION OF PEACE

by H F ANGUS

#### *The Essence of Security*

The security which must be afforded to nations, if they are to be induced to lay aside their armaments and keep the peace, is not analogous to the security which must be offered to the individual, if he is to be inspired to undergo an edifying martyrdom. It is not the counterpart either of the *objective* security against all imaginable evils which some religions offer to the faithful after death, or of the *subjective* security which the sincerely faithful feel in this world as to their prospects in the next. Human laws never give security of this sort.

But human laws do give some security. The normal citizen, in a law-abiding community, does not carry a gun and hardly thinks it worth while to insure against robbery or assassination. He is not so foolish as to suppose that the community will remain law-abiding under all conceivable circumstances, nor so badly informed as to think that crime is a thing of the past. He simply does not concern himself about contingencies which he considers unlikely to affect him personally.

When we discuss the possibility of organizing international peace we naturally fall into using the term "collective security." Possibly we have in mind the sort of security which the individual enjoys against crimes of violence. If we stop to reflect we see the weakness of this parallel. Nations do not seek security against other nations, which correspond either to professional criminals or to the perpetrators of passionate crimes. What they do seek is security against being harmed by the use of armed force, or other forms of coercion, even if these are employed by other nations who believe that they are vindicating their reasonable interests. This is the negative aspect of security. Nations also seek the power to assert their own reasonable interests, even if these conflict with the wishes of other nations. This is the positive aspect of security. It is for the sake of security in both its aspects that nations maintain armaments and form alliances and it is security in this wide sense that must be provided if international peace is to be organized. Armaments and alliances never give absolute security, nor need a system of collective security do so. However, in order to be an acceptable substitute for armed force it must give to every nation as great a degree of security as that nation can hope to obtain by armament.



## COLLECTIVE SECURITY

*Rapporteur* ALAN B. PLAUNT*Definition*

'Collective Security' may perhaps best be defined in comparison with other methods of attempting to obtain security. History reveals that nations or empires have sought security in three ways, by domination, by a system of balance, and by collective arrangements.

The collective system may be defined in comparison with the balance of power system. The balance of power system attempts to achieve security by a balance of competing alliances; the collective system, prefaced on the belief that in an interdependent world the ultimate interests of all nations are the same, aims to guarantee the security of each by the concentrated force of all. The collective system and the balance of power system differ most widely in their methods. The balance of power system relies on secret diplomacy and pressure, it ignores small nations; the collective system emphasises the use of open discussion and more than anything, provides the machinery of arbitration, conciliation, and judicial settlement.

Whether or not the conception of collective security is a valid one therefore, it may be defined as the attempt in the international sphere to provide security to the individual nation, large or small, just as within the State the security of groups or classes, is assured.

The analogy between the security of the individual within the State and that of the State within the international collectivity is frequently made, but it is a misleading analogy. The first, in the language of one of our groups, is a police problem, the latter a problem of social justice finding its protection in legislation.

Is security a form of political organization or a state of mind? Security is both a state of mind and the organization which permits and engenders this state of mind. Collective security is that degree of co-operation among States which will achieve this condition. How great this degree of co-operation may need to be, whether or not it will necessitate a derogation from or limitation of national sovereignty, what force may be needed, all these are questions which ought not to confuse the notion of collective security but which ought to be considered in their proper place when we come to ask what are the requirements of security.

*Validity*

Is the notion of collective security a valid notion? Is it based on psychological realities? Is it politically feasible? These are the questions that appear to require an answer before principles and methods are



considered For if the very notion of collective security is a chimera there is obviously no use trying to work out methods to make it effective

Professor Francesco Coppola,<sup>1</sup> for example, claims that the individuals comprising national States will not pursue general and distant, as opposed to immediate and concrete aims Professor Coppola's arguments are worthy of careful analysis, though they do not strike most Canadian observers as valid Canadians, as a whole, believe from their experience of 1899 and 1914-1918, that nations do in fact support and indeed fight for, aims both general and remote As a leading Canadian military observer puts it, — "exceptional conditions will bring about quite extraordinary manifestations, very often because sentiment is aroused and quite over-rides immediate and materialistic considerations Hence Canada in 1899 and in 1914 "

The notion of collective security need not be described as invalid until it has been given a thorough and fair trial Certainly, by practical tests, the notion of competing alliances has failed in an interdependent world. The idea of collective security springs out of the economic and scientific interdependence of the modern world

The general feeling on the question of the " validity of the notion, " however, is that it is largely an academic problem Having agreed on a clear cut definition of the aim, which is collective security, or the organization of peace, we should proceed to a concrete consideration of how that aim can be achieved One of our study groups sums up this view as follows

" The issues involved in the main problem under discussion are essentially simple in principle, however complicated in technical detail Stress should be laid on the fact that the fundamental question is how to achieve security The primary importance of these issues should be discussed in a practical fashion The achievement of collective security will not be assisted by scholastic debate. It is not fruitful to refine the analysis of these issues into elaborate metaphysical and psychological problems If the six-day conference in June devotes its attention to such hair-splitting as is indicated in some of the questions in the draft report, much time, money, and energy will be wasted The discussion should turn, not on a number of remote hypotheses, but on the main question, viz how to organize an international authority competent to deal efficiently with the causes of friction which arise between States "

A study of the problem indicates that the organization of peace on a collective basis may be feasible, if not on the basis of the co-operation of air-tight sovereignties, which has so far failed, then certainly on the basis of some measure of world government, involving derogation of sovereignty

<sup>1</sup> See below, p 144



## GREAT BRITAIN

(British Co-ordinating Committee for International Studies)

## THE ELEMENTS OF COLLECTIVE SECURITY

by C. A. W. MANNING

The first topic we are invited to consider is the definition of our subject. The term "Security" in its most general sense, will hardly give us very much trouble. In defiance as it were of etymology the term will be taken here to be sufficiently defined as "freedom from insecurity." Only when the adjective collective is attached to the noun security does there begin to be room for debate. Leaving aside for the moment the various particularised and conventional meanings of the term and seeking simply to define "collective security" in its most general sense, one may find oneself asking, "Collective in terms of what collectivity? And in what sense collective?"

In the final analysis no doubt, the collectivity of which we should think is the universal collectivity of mankind. It is concrete human beings who are to be, and possibly also to feel, secure. For the purposes of this inquiry however it will be perhaps more conveniently assumed that the road to this result will be found through the creation or development of security for that less numerous collectivity known as the "family of nations." It is often urged, indeed, that the organization of the world in a number of sovereign States is the true cause of its present lack of security but, legitimate though such a surmise may be, it is not here proposed to argue from that standpoint.<sup>1</sup>

In what sense "collective"? When speaking of collective security do we mean security collectively enjoyed, or collectively engendered or both? The matter is not really in doubt we shall surely be at one in directing our minds to the security of the individual States to be catered for by the collectivity of States.

Even, however when uniformly thinking in terms of a collectivity of States, rather than of individuals students may still be found to differ in the meanings they will attach to the term "collective security." For so strenuously has it been bandied about in post War political discussion that, at any rate in the mouths of some controversialists the word security has come to have something of a conventional, specialised signification. In the minutes of the Committee on Arbitration and Security there is the record of an exchange of views between M. Politis

<sup>1</sup> Nor shall we here adopt the equally possible opinion that security would only be achieved if armaments were abolished or if in every important country there existed a strong trade-union organization dedicated to the policy of preventing war by means of a general strike or if and when there everywhere came simultaneously into power governments of the Left, or of the Right, or indeed of the Centre — according to the point of view



and Dr Riddell, of Canada. The latter having demurred to the use of the term "security" as seeming necessarily and exclusively to denote a condition achieved through treaties of mutual assistance, M. Politis, after reflection, assured him that that was indeed just what, in Geneva parlance, the term had in fact come to mean. In the interests of intellectual freedom — and incidentally of scientific truth — it is good that in the International Studies Conference there is no *a priori* need to treat what we may call the "Greek" view of international life as in any sense more respectable than the "Canadian" view.

.. Having attempted a definition, we are asked next to discuss the "value" of the idea of collective security. This, though they may doubtless discuss it, is not, at bottom, a question that a gathering of scientists can, as a matter of science, determine.

Strictly, the question is one of political and ethical, partly perhaps of aesthetic, appreciation. One enquirer, alive to all the bearings of the matter, may see in collective security an absolute good, worth while on no matter what basis, in no matter what circumstances, at no matter what price. Another, while conceding the sentimental attractiveness of the abstract ideal, may have noticed that the security of which statesmen dream, even if it have itself no special concrete form, is apt to be conceived of with particular concrete implications. The vision may have different features for different minds. The security scheme dear to State "A" may have demerits in the eyes of State "B", if not of the world as a whole.

Proposals for dealing with the security problem may be classed roughly into two principal categories, those which do, and those which do not, postulate a centralised political authority — some form, that is, of "super-State". But in this paper it will be assumed that our task is to study means to collective security in the world as we know it to-day, with the decentralisation of political authority about as stubborn a fact as ever in history before.

The concentration of authority may, of course, be *de jure* but it may also come about merely, as it were, *de facto*. Even though there be no kind of constitutional federation and the several States retain intact their formal sovereignty, nevertheless, through the military ascendancy of some single country, the others may be in effect denied the beneficial enjoyment of their status. Once the position arrives in which the will of one State is virtually law, the security of all is also in a sense achieved. The policy of the "Balance of Power," so long relied on by England, is commonly put as having consisted in siding against whatever continental Power seemed at any given moment to be aiming at a European hegemony. It may be that, in thus denying to others an ascendancy to which she did not herself aspire, England will have had the main responsibility for Europe's not having heretofore arrived at a collective security regime. The student, therefore, may notice that security of a sort, and the diplomatic ascendancy of a particular Power or coalition



of Powers, are not mutually incompatible aims. Still, in the present paper the prospects will be examined of improving collective security while the decentralisation of political authority persists in actual fact.

If it was necessary that we should pause for the definition of our subject, it is hardly less important that we should seek common ground as to the angle from which our inquiry is to proceed. Our institution, of course, has little in common with a diplomatic conference: our constitution and our task are different, and it follows that our technique should be different too. We are to work not as negotiators, but as students mere unofficial lookers-on: and whether or not we be privileged, as onlookers, to "see most of the game," it is clear that in this capacity we can have no formal influence on the play.

### THE OBSTACLES TO COLLECTIVE SECURITY

by G. M. GATHORNE-HARDY

The reasons most commonly adduced for the failure of the system embodied in the Covenant of the League of Nations are two — the absence of certain important countries from membership of the League and the derogation from national sovereignty which the assured working of a system of collective security is supposed to entail. I do not myself believe that either of these obstacles, or even both of them in combination, are primarily responsible for the failure complained of. Taking these alleged difficulties in the order given above, let us first consider the possible effects of the existence of certain Powers which do not profess allegiance to the principles and obligations of the Covenant. The situation has recently been simplified by the adhesion of Soviet Russia to the League and the only important Powers now external to it are Germany, Japan, and the United States. The two first, both until lately members of the League, may perhaps be described as potential disturbers of the peace, but the characteristic of the United States is rather a pacific isolationism, which only the most exceptional circumstances could induce her to abandon. Let us suppose, then, for the sake of argument what seems the worst possible situation — Germany and Japan in alliance and actively contemplating the possibilities of a policy of aggression on the assumption that all States members of the League will loyally observe their obligations. Assume that is, that any resort to war will be opposed by the united membership of the League with the weapon of the economic boycott backed, if necessary by the joint force of the signatories: would the possibility of any interference by the United States in the effective working of such sanctions seem to the aggressors sufficiently probable to encourage persistence in the course of action proposed? The question is too often propounded from the point of view of the members of the League: Can we count on the non-interference of the United States? Even to this question



many recent official and semi-official pronouncements from America would seem to provide a satisfactory answer, but it is submitted that, if it would seem unwise for potential aggressors to count on at least some measure of active support from America, the second question does not really arise. For the purposes of this part of our argument, we assume, of course, that the system of collective security is in other respects in full working order. In that case, we must surely agree that even two great Powers in alliance would be confronted with an opposition so overwhelming that the small chance of United States interference in their interests could not weigh in the scales, and aggression would appear so hopeless that the project would be abandoned.

As to the objection founded upon the alleged derogation from national sovereignty involved in the imposition of automatic sanctions, it may first be pointed out that the States members of the League have, on paper, already expressed their willingness to waive this difficulty, and to treat recourse to war as a *casus belli*. Moreover it is difficult to see wherein their agreement on this point involves any unprecedented sacrifice of sovereign rights. Historically, nations have continually stated in advance that such and such an action on the part of another country will involve their joint and several resistance, and there seems no reason in principle why the same attitude should not be taken towards any and every resort to aggression. If nations conceive it in their interest to combine in resistance to any course of action, and voluntarily enter into treaty obligations accordingly, this is merely an expression of national policy on the part of each of them, which entails neither departure from precedent nor abandonment of sovereignty. As a matter of fact, in signing the Briand-Kellogg Pact, renouncing war as an instrument of policy, most of the nations of the world have fettered their individual discretions in a far more fundamental and unprecedented way. The real difficulty, in fact, is not that nations are theoretically jealous of their sovereign rights, but that most of them seem disposed to shirk a treaty obligation if they conceive that their individual interests demand such a course. Though there is, unfortunately, nothing unprecedented in a failure to fulfil such obligations, there has at least been, in the past, a general expectation that undertakings of the kind will normally be carried out. It is hardly too much to say that such an expectation is, for practical purposes, more important than its eventual realisation. Collective security may be compared to the reserve in a bank, so long as it is believed to exist, it will seldom be called upon to function, while in times of panic and distrust its existence may well prove no sufficient safeguard. The most disquieting feature of the post-War situation is the general scepticism which prevails as to the reliance which can be placed upon even the most solemn of international pledges.

Since a general scepticism as to the trustworthiness of treaty obligations is a new phenomenon, it will probably be found that the



reason for it is traceable to some factor in the situation which is also a new development. Such a factor is to be found in the radical change which has taken place in the general attitude to war.

In the days when wars were carried on by professional armies controlled by a personal ruler the likelihood that a Sovereign's promises would not be performed was almost unaffected by the state of public opinion in the territory which he governed. At the present day, whether under democracies or dictatorships the state of public opinion is the all important factor, and this is, moreover almost unpredictable without foreknowledge of the merits of a particular dispute the most certain thing about it being that it will be far more reluctant to sanction any recourse to military pressure than was formerly the case. Though popular opinion is normally pacific, its importance in modern conditions therefore, constitutes one of the most formidable obstacles to binding pledges of collective action which we have to consider.

The controllers of national policy feel that they can no longer guarantee loyalty to such commitments, and hesitate, therefore, to enter into them. Even if they can be persuaded to do so a doubt as to the possibility of the necessary popular response is shared by those who desire peace and those who contemplate a breach of it.

This is one difficulty but a closer analysis of the exact change which has taken place in human opinion since 1914 will reveal a further obstacle. What is it that has brought about this change? How is it that the experience of the Great War of 1914-1918 has been able to revolutionise the time-honoured attitude of mankind, which remained almost unshaken through centuries of almost continuous warfare? The answer is surely that the late War was a war of a highly exceptional and indeed so far unprecedented kind, both in respect of the number and importance of the nations engaged, and of the extent to which it made use of the resources of modern scientific industrialism in their highest development. Had the Great War resembled any previous experience of international conflict, it seems safe to say that it would have been no more successful than its predecessors in arousing so general and sudden a revolt in the conscience of humanity. In other words the revolt and protest are directed, not against war but against the peculiar and special kind of war with which the world became for the first time acquainted in 1914. It is this kind of war and this only that the world is really resolved to go to any lengths to prevent—a war the devastating effects of which impinge on the interests of every nation, neutral or belligerent and fought with the resources which only a very few of the most highly industrialised nations could command. This type of war seems, on reflexion destined to be almost as exceptional in the future as it has been in the past. It is true that all future wars are likely to differ from those of the past in one respect owing to the invention of the aeroplane this affects in particular the attitude of Great Britain, which no longer derives protection from its insular position.



tion, it does not, however, modify the present argument that the majority of wars, in the future as in the past, are unlikely to menace the direct or immediate interests of a great number of Powers. History tells us that the vast majority of wars only affect an extremely limited number of belligerents, and that to localise the conflict by a policy of neutrality is often a more satisfactory expedient than intervention. When, therefore, the nations of the world are invited to implement a Covenant which treats all recourse to war on the same footing, their instinct recoils from so general a commitment. The ordinary Englishman can perceive no interest compelling him to take action in a dispute between two South American republics, and there are signs that in the United States and parts of the British Commonwealth some possible conflicts between European Powers are similarly, if less reasonably, regarded. In some cases, at any rate, the only sound objection to such an attitude is that it brings the whole collective system, as at present organized, under suspicion. This, indeed, is a grave defect of the existing situation, but the real responsibility for it seems to rest rather on those who constructed the system on an unreasonable basis than on those who now refuse to implement it.

The ideal attitude is that of a policeman in a street fight, who is completely unconcerned with the rights and wrongs of the quarrel, but determined to separate the combatants. The insoluble question of determining the aggressor has attracted too much misdirected ingenuity. It is really irrelevant. Collective action should first be applied to prevent hostilities or enforce an armistice. It is a formidable obstacle that at present such sublime detachment from the merits of a dispute is hard to find. The nations where it exists are for the most part natural neutrals, insufficiently concerned by the struggle to be willing to interfere at all. The one important exception is what may be called the English-speaking world — Great Britain, the British Commonwealth and the United States, especially and most obviously the first. We are vitally concerned in the preservation of peace, but completely disinterested in the question of frontiers. But this brings us to what to my mind are the most formidable obstacles of all, — the amphibious character of Britain and her Dominions, and the temperamental objection of the Anglo-Saxon mind to definite long range commitments. The true function of a collective system is rather that of a scarecrow than a gun, the principal benefits are forfeited when it breaks down as a deterrent and has to proceed to action, since this may involve a more disastrous collision than that which it is designed to prevent. This being so, a previous and trustworthy declaration of intention is of its essence. But this is just what the English-speaking nations, indicated by nature for the rôle of guardians of the peace, stubbornly refuse to provide.

To establish a satisfactory collective security, one further difficulty, not hitherto touched upon, must be surmounted. The use or threat



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To establish a satisfactory collective security, one further difficulty, not hitherto touched upon, must be surmounted. The use or threat



of force must be deprived of its nuisance value. In the circumstances now existing even if an aggressor contrary to his expectation, is faced with combined opposition and compelled to call a halt, he is not the loser but the gainer by his action. He has advertised his grievance, his tardy repentance will probably be welcomed with a generous provision of "fatted calf," and he is left in every way more favourably situated than he was at the outset. So long as this is the case, resort to aggression is likely to recur. The history of the post War world provides a number of instances of successful resort to force, which it would perhaps be tactless to particularise in an international gathering. These will continue to occur unless aggression is not only checked but penalised in every case.

### THE PREVENTION OF WAR<sup>1</sup>

by H. R. G. GREAVES

#### *The Causes of War as Conceived in 1919.*

The collective system set up at the Peace Conference rested upon a reasoned estimate of the causes of war and the means of their removal. The nature of that estimate was dictated partly by what seemed to be immediately practicable but partly also by the political philosophy current there. It can now be claimed, I think with justice, that those general political ideas were to some extent inadequate and unreal. It can now also be asserted that the period of sixteen years has witnessed changes in conditions political and economic, that necessitates a new judgment of what is practicable. Danger lies in failing quickly enough to adapt ourselves to these developments.

The chief causes of insecurity in the view of the authors of the Covenant were four. Omitting armaments as being not only a cause but a consequence of insecurity the first and most important of all in their eyes was autocracy. When peoples become politically free there is no need to expect them to go to war or so at least the argument seems to have run.

The second cause for insecurity was the absence of any provision for regular conference. Since democracy appeared to be spreading with great rapidity in the Europe of 1919 little remained to be done except to organize its natural tendencies for co-operation and harmony by providing the leaders of the peoples with a regular meeting place at Geneva, and by indicating to them certain lines of desirable collaboration.

Thirdly that machinery was to provide governments also with a means of securing impartial judgment should disputes arise between

<sup>1</sup> The argument of this paper is amplified in the author's book "Reactionary England" in this short space it is necessarily incomplete.



them But it was left to them to organize a court as they might wish, and the extent to which they should bind themselves to submit to its jurisdiction could safely, on these premises, be left to them to determine

Fourthly, since international law must clearly, like all other law, be susceptible of change, if it is not to cause a sense of injustice and therefore conflicts, the Assembly was empowered to recommend change But, of course, the consent of any party affected by the recommendation was still, quite logically, regarded as necessary

### *The Myth of the "Change of Heart"*

Now, all this relies for its value on the assumption that with the defeat of the Germans and the spread of democracy a moral regeneration of the world was bound to take place "Nations," said Wilson, "must in the future be governed by the same high code of honour that we demand of individuals"

The problem of how to secure that "high code of honour" or that "sincere will" remains unsolved Originally it was hoped that publicity and the free discussion which democracy would provide might automatically secure it To-day it is seen that the sources of information are easily tainted by sectional or national interests, and that selfish and immediate advantage to a small and powerful group sometimes weighs more in the scales of policy than ultimate and more general advantage And therefore it is no longer possible, if indeed it ever was, to put reliance upon publicity, or to believe in the inevitable success of those elements in the great countries which have a sincere will to make the League system operate In fact, the exact reverse might be argued, since the greater Powers are precisely those in which sectional interests, whether in industry, the Press, or war offices, are relatively most powerful

### *Why National Sovereignty Incapacitates the League*

Much as we might wish to believe in this moral regeneration it is patently absurd to pretend that it exists Whatever may be the duties of a government written down on paper, when the time comes for fulfilling them, that government will have a hundred practical considerations to take into account, and will only fulfil them if the balance of advantages suggests that it should If it decides that it should not, in the world as we know it to-day, there will always be powerful legal and political opinion to prove that the obligation does not exist

We may agree, then, that the League machinery has failed because the governments have not been ready to make it operate But we must add immediately that we have no grounds for any certainty that governments will be more ready in the future to make it operate, and that since this readiness is implicit in the whole League method, that method must be said to have failed, and to require replacement either by fundamental improvement or by another alliance or league



*The Real Causes of War*

The plain fact is that national sentiment has been so carefully built up in the past that it is immediately available for the support of almost any national action. Your country's right or wrong may have a greatly *diminished* appeal as an argument. But since it is always so much easier to hear the case for your country being right, since in many countries it is illegal to suggest that it is wrong there is *small reason for relying* upon the rational outcome of any conflict of view.

The world moreover is so organized as to give the maximum authority to those whose interest it is to say that the national view is the right one.

Every conflict of commercial interest between the nationals of one country and those of another is capable of involving the whole political machinery of both States. Rivalry between two individuals or two firms may thus become a dispute between two powerful States. There are many reasons why this kind of friction should increase. The rival imperialisms which were so largely instrumental in creating the embitterment of feeling that resulted in the Great War seem to be less important to-day only because the battlefield of unexploited territories has all but disappeared. Where any possibility of such exploitation still exists as in China, the conflict may at any moment break out again. And beneath the surface there is always the unsatisfied demand of those countries behindhand in the race for sources of raw material and markets, which again only awaits a favourable opportunity to burst into the open — Japan, Germany Italy.

Apart from the traditional rivalry of old imperialisms in undeveloped areas of the type which produced such outbursts of the war spirit as did the Fashoda incident there is to-day the spread of commercial rivalry into every field. Every instrument available to the State is used in the insane struggle of an economy that has learned to produce but not to distribute its wealth, for the purpose of retaining old markets or gaining new ones. Tariffs, quotas, exchange restrictions, currency manipulation, import prohibitions, trade embargoes follow one another in the frenzied effort to preserve home markets for profit making. Subsidies, wage-cutting even the threat of diplomatic sanctions if not of armed force, are used in the struggle to keep or to increase the share of markets abroad. It is but a small step from a national sentiment exacerbated by economic conflict to one ready to resort to arms. The distance from the use of the economic to that of the military weapon is not a great one. When, in accordance with the League Covenant there was talk of an economic boycott of Japan we were warned that it would lead inevitably to war as a measure of retaliation. Yet the interests affected demand such a boycott without compunction when certain national industries suffer from Japanese competition. Why should we believe that the results would be different



in this case? The British embargo on Russian imports was accompanied by the rapid growth of war mentality.

Governments become more and more indispensable to industrialists. Government action is needed to deal with labour at home and with competition abroad. The financing of a party which will supply a subservient Government is therefore the best of investments. The natural ally in this task of political action is the big scale industry of the Press. We have every conceivable means of tendentious news, panic-mongering, and the playing on national emotions resorted to in the game for political power. The scales which Liberal philosophers believed to be weighted in favour of rational decision prove to be weighed down by the overwhelming economic, and therefore political, influence of a tiny section of what Bentham would have called "sinister interests."

They are backed up by a yet more sinister interest — the armaments manufacturer. It is perfectly rational, not to say natural, that the big steel and chemical industrialists should supply the party which is most likely to ensure that the country shall spend vast sums on their wares with the funds necessary to achieve political success.

### *Empty Pledges*

We have therefore to add to the causes of war which were recognised by the peacemakers of 1919 the facts of national psychology and capitalist economic rivalry. But this is more than to add two additional causes — in fact it invalidates the main part of the original thesis. It means that such are the economic advantages resulting from nationalist policies that such policies will be pursued. And since the adoption of such policies implies conflict, we have no right to assume that the interests of capitalist societies, even when democratic, will coincide. "The duty of the sovereign authority to aim solely at the welfare of its own adherents, in complete disregard of the welfare of the rest of the world," to which Mr. Hawtrey refers,<sup>1</sup> leads eventually to the use of force. National emotion can be used to the full by those who control industry, the Press and the government, in the interests of profit-making. Thus, there can be no guarantee that the apparatus of government in a democracy will not be used for the purpose of war, as long as that democracy is under the control of the leaders of an economic competitive system.

To rely upon the mere assertion of peaceful intention and obligation is therefore to put faith in a phrase empty of all meaning. The existence of strong economic interests and rivalries able to use State authority and nationalist emotion in the furtherance of their separate interests means inevitably that when the gain is great enough, and the risk from breaking faith is small enough, an international obligation will

<sup>1</sup> In *The Economic Aspects of Sovereignty*



The former would consist

(a) In all the other States recognising and admitting the right of the State in question (which we shall call State A) to be permanently more heavily armed than each of its neighbours. This thesis is evidently untenable for the *security* of State A would be the insecurity of State B or of State C agreed to *a priori* and permanently by the latter.

(b) In all the other States solemnly binding themselves to rush to the aid of State A at the first alarm. This thesis is no less untenable for it is impossible to claim that all the other States should become *a priori* and permanently the policemen of a single one.

There remains the other system, apparently but only apparently more reasonable — that of reciprocal guaranty.

This system would include

(a) Prohibition to all the States and to each one of them to undertake a war on behalf of its special interests *i.e.* on behalf of its national interests.

(b) Obligation for all States to take arms at once against the State which should undertake such a war — that is to say to use the term which is in fashion, against the aggressor.

But a moment's reflection suffices to show that all this is anti historic and anti human and consequently in the last analysis, impossible for the following reasons:

(1) Nations would be forbidden to make war on behalf of their national interests, which are the only motives capable of arousing their passions to the point of braving this terrible danger and of enduring suffering and death while at the same time they would be obliged, on the contrary to be always ready to engage in the terrible war of our time for reasons which do not concern them, which they do not understand which do not by any means arouse their passions *sometimes*, even, they would be obliged to fight for interests contrary to their own historic interests. That is to say they would be forbidden to make war *according to nature* and they would be ordered to make war *against nature*. This is evidently anti historic and anti human, and, — since the nations are made up of men and not of machines — impossible.

(2) A particular war would be transformed, always and necessarily into a world war — a strange way of advancing the cause of peace.

(3) The aim sought by this method would be to immobilise indefinitely the international equilibrium and the international hierarchy existing at a given moment — that is, to stop artificially at a given moment the movement of history in its perpetual becoming. This likewise is anti human and impossible.

In conclusion, and leaving aside many other arguments it is natural and legitimate that a State should endeavour to establish according to its own judgment and by its own means its own *morality*. It is absurd and impossible to establish by means of a universal text and a



universal guaranty what is called "*collective security*" To persist in making this anti-historical and impossible "*collective security*" the first condition of a genuine peace is to distort the historical intelligence of the nations and at the same time to render practically impossible the establishment of a peace not only diplomatic but real. And proof of this fact has been accumulating since the World War.

Does all this mean — we added — that the effort to avoid war must be abandoned? Not at all. It is possible, in our opinion, if not to avoid war for ever, at least to make it more and more rare, but by other means, and especially by substituting for the system of rigid equilibrium, which alone has been considered thus far, the system of elastic equilibrium, or better, of *flexible equilibrium*.

The peace, or rather the peace treaties which follow a major war, establish a formal, legal equilibrium which corresponds to the real balance of forces at that moment.

There are strong States and weak, victors and vanquished, and, even among the victors, some are experienced and others inexperienced, some shrewd and others naïve. It is natural that the formal equilibrium established by the treaties should favour the former at the expense of the latter. But, little by little, the situation changes. There are weak States which, little by little, gain or regain strength, small States which grow, naïve States which acquire experience, and, on the other hand, there are strong States which become weaker, valiant nations which grow old, etc.

It follows that, little by little, between the static equilibrium established by the treaties and the real and shifting balance of the living forces, the correspondence and the harmony of the original moment disappear. It is when the lack of harmony and the disproportion become too great that wars break out again. What can be done to avoid them?

Here again there are two systems. The first, that which has been thus far considered, consists in rendering the formal equilibrium as rigid, as resistant, as massive as possible, by means of leagues, of texts, controls, sanctions, and guaranties. It is true that it will thus endure a little longer, but when it finally breaks down, as break down it must, the collapse will be all the more violent and destructive.

The other system, the only useful one, in our opinion, consists in giving elasticity and flexibility to the legal equilibrium set up by the treaties, so that it may closely follow and from time to time readapt itself to the real balance of forces and of needs. This is the only means of avoiding as long as possible violent outbreaks, that is, of avoiding war.

In other words, to avoid war, we must not organize the repression of war by force, that is to say, by another and greater war. We must



apply ourselves to eliminating the causes of war. And this result can be attained only by giving the peoples other means — but effective means and not theoretical, platonic, ridiculous ones — of satisfying their essential interests their vital needs, without resorting to war.

## COLLECTIVE SECURITY AND REALITY

by ROBERTO FORGES-DAVANZATI (*translation*)

Profiting by the experience acquired by reason of the international events which have taken place up to the end of the month of April, let us examine certain fundamental elements of the political reality in the presence of which we find ourselves.

I Failure of the so-called General Disarmament Conference. It is possible to seek consolation in the belief that its failure is only temporary but we, for our part, believe that this failure is final. It is to be noted that, at the same time the Naval Conference was likewise proving a failure, and that the Washington Treaty for the regulation of the respective naval forces was being denounced by Japan. The so-called General Disarmament Conference has failed from the standpoint of method, because it was already mired in a general procedure which was purely technical and external but it was also in fact abandoned because of political events which found their military expression in the unilateral decision of Germany on March 16. We are, then, in stark reality in a period of armament, made worse by the Conference, which because it raised the question without being able to settle it has only made it more irritating and acute, after a series of discussions as long as they were ineffectual. This experience and this reality must be given due weight.

II. Far reaching transformations of the idea of war ('The war of to-day is in many respects, no longer comparable with the war of the past — Bourquin Report, p. 322). It is unnecessary to dwell at length on the difference which there might be between war to-day and the world war of 1914-1918 which was itself very different from former wars. War to-day may involve the whole nation. It must be expected that it will be violently aggressive and destructive. The proposal of an air pact has called attention to a new form of conflict as lying within the present-day technical possibilities — an unannounced air attack, swift and extremely destructive which might even precede the declaration of war. War by land and war by sea are two-dimensional wars, which are *ipso facto* limited — they are wars which imply a limitation of the field of battle and a definite succession of events. War in the air on the contrary will be lawless war. This is another reality more imminent and dominant than ever which must be taken into account when we discuss collective security and preventive measures.



on the basis of legal regulations which may be reduced to ashes with lightning rapidity.

III. Social solidarity has no effect in the international field, or if it does exert an action, it is in a sense opposed to collaboration between States. Social solidarity still manifests itself as a class movement, except in the case of the unitary fascist revolution. If a class shows a tendency toward internationalism, this tendency is expressed thus far only in one way, that is, in setting up within each State an antithesis between classes and, consequently, in acting practically in an anti-national direction. This is another reality to be taken into consideration, a reality which reacts on the domestic policy of States, and weakens it. And domestic policy is the fundamental basis of all foreign policy, for it involves the stability of Governments and the continuity of the lines of policy in which they are engaged.

IV. The situation of the League of Nations. The United States, though it was the promoter of the League of Nations, remains outside of it, so do Japan and Germany. Bolshevik Russia has joined it. The League of Nations carries on its work with difficulty. It manages to perform certain of its duties only when the most responsible European States agree in advance on the line of conduct to adopt for the solution of certain problems.

The experience acquired thus far by the League of Nations may be summed up as follows. Impossibility, even in normal times, even when it is merely a question of making plans to be applied in case of conflict, to ensure the rapid and effective application of the articles of the Covenant. And if this is so, what significance can be attached to the attempts to create other protocols of a more far-reaching character than the Covenant, when the Covenant itself is seen to go beyond the capacity and the possibility of the individual States to make binding agreements? What is the significance of the adoption of this method which consists in isolating the problems raised by the Covenant, in studying them in the abstract, and in imagining that they can be solved by a set of rules which are so general that they become generic, which include so many possibilities that they become hypothetical?

To take as a starting-point the idea of so-called world-wide rules for the regulation of particular and very diverse political realities is, in our opinion, a method which must be resolutely abandoned. We must go back to the beginning and start out, on the contrary, from very diverse particular realities in order to obtain this collaboration between States. This collaboration, in order to be capable of attaining broader horizons, must begin by relations limited to the responsible States, on the basis of the historic hierarchy of the States themselves, which cannot be ruled out of existence.



## NORWAY

## COLLECTIVE SECURITY

by A. RAESTAD (*translation*)

An analysis of the concept reveals that security is necessarily a condition excluding the predominance of violence (it makes no difference whether the violence in question can be designated as aggression or not, since 'aggression' is a technical term). However even if security is fully guaranteed to the States by collective organization, this does not mean that every State is necessarily safe from war for the state of war is a legal situation which can be spontaneously created by the organs of a State, between that State and another State. Provided the competent internal organs perform certain formally specified acts, war in the sense of a legal situation, exists. In order to prevent this possibility from ever becoming a reality States must either give up the right to commit these acts which by definition create the state of war or they must suppress all organs capable of making war. Within the framework of a collective system, security would be described as absolute even if it were still possible for the state of war to be created.

Moreover, on the other hand, even though it enjoyed the most absolute certitude of not being dragged into war the State would not thereby be protected from all possibility of violence coming from the exterior. The State committing such violence might describe it as legitimate defence (cf. the declarations of the Foreign Affairs Committee of the United States Senate at the time of the discussion of the Pact of Paris), or as reprisals authorised by international law or as an intervention in the interest of humanity likewise approved by international law.

In spite of these facts the collective organization of security is often spoken of as collective maintenance of peace. The reason for this is that, historically the longing for peace has been at the base of the efforts directed toward providing security by collective action. The message that the States are maintaining peace for the greater happiness of the whole human race, is sure to be far more favourably received than a statement that the same States are united in a common effort tending to guarantee to each of them a state of security — a thoroughly selfish aspiration. Under other circumstances, the distinction between peace and security is obligatory. Thus, the preamble to the Covenant states that the co-operation of the nations ought to achieve international peace and security."

Looked at from another angle, the security which the States are endeavouring to organize by collective action will protect specified values namely the territorial integrity and the political independence of each of them (Article 10 of the Covenant). No other definition has been attempted. Violence and war are evils but so long as violence is ineffectual and war a futile gesture security — or safety — is not



destroyed. When a cracksmen attacks a safe with ineffective means, he disturbs the established order, but he does not destroy the security enjoyed by the proprietor of the bank-notes. It is not even accurate to say that if territory and the State were everywhere protected against violence, peace would thereby be permanently established. History teaches us clearly enough that war is not always, for the State which begins it, a means of obtaining territorial gains nor of depriving the adversary of political independence. In a considerable number of cases, the State beginning a war has had as its aim either to consolidate a religious system or to obtain commercial advantages, or to regain its own liberty of action. To be sure, a solid system of collective security, by allowing the most exposed States to reduce their armaments, would tend greatly to diminish the number of possible wars. However, no system of organization of security will abolish war entirely.

On the other hand, even supposing that disarmament would in itself tend to diminish the number of possible wars, disarmament would not thereby be transformed into a system of collective security. To disarm means to lay aside the framework of another system, that of security by self-protection. But once this framework is laid aside, the problem remains, less difficult — or more difficult — there is a conflict of opinions. Just as peace and security are two different things, so are disarmament and security. The famous triptych, therefore, bears the inscription "Arbitration, security, disarmament."

"Collective security" does not imply, as a necessary element, that the States disarm and submit their disputes to arbitration. On the other hand, if security is effectively organized on a collective basis, disarmament will come, since dangers will be eliminated, and disputes will be settled by arbitration, since violence will have lost its principal object. Conversely, once disarmament has been achieved and arbitration become the ordinary means of settling disputes not settled by common consent, the problem of security will have been greatly simplified. The moral atmosphere will have been cleansed of the suspicion which charges it at present. But while we recognise that, we observe at the same time that security, disarmament and arbitration remain three distinct things.

Let us add a fourth concept — justice, tending to abolish inequitable situations.

A few years ago, when the modern reign of arbitration was still in its early stages, jurists were divided on the question whether arbitration could also serve to modify existing positive law by initiating a more equitable legal situation. Those who replied in the affirmative proposed to the States that they open this new path to arbitration by permitting arbitrators to decide questions *ex aequo et bono*. Rejected and taken up again, this idea was finally abandoned, such seems to be the result, at least from the practical standpoint. It is true that, in the practice of arbitration, the nations will never be able to place justice before their own interests, but, like domestic law courts, international arbitration is



fitted for the administration of justice only in the sense of declaring the law. That kind of justice of which the legislator is the organ in the internal life of the nation cannot be meted out, in international relations, by arbitration tribunals.

In the ethics of the ancients as developed by Aristotle, a distinction is drawn between commutative justice and distributive justice. Commutative justice undertakes to provide for one and the same subject a better situation than the existing one, and is the task of the tribunal. Distributive justice deals with several subjects in relation with one another, undertakes to establish a régime different from the existing one and better adapted to serve the common interest, and is the task of the legislator. Aiming at distributive justice in the international field, Article 19 of the Covenant provides: "The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international situations whose continuance might endanger the peace of the world."

Treaties and legal situations may be revealed as inequitable in the long run; their unjust character is often innate. However, even if everyone agrees that the situation in question is unjust and inequitable, it does not necessarily follow that the interested parties are able to remedy this injustice. It is true that, often, the injured party frees itself by repudiating the treaty or by suppressing the situation considered unjust. But in other cases, the legal situation cannot be abolished by a unilateral act on the part of the dissatisfied party. In a case of this kind it may happen that the two parties, though they agree regarding the flaws of the existing situation, cannot agree as to the arrangement which should be substituted for it. In general, the parties do not seek abstract justice but their own advantage. It is, in fact, much simpler to enter the lists for "the sanctity of contract" than for "the sanctity of justice."

## POLAND

(Central Committee of Polish Institutions for Political Science)

### THE DEVELOPMENT OF INTERNATIONAL LAW AND THE PROBLEM OF COLLECTIVE SECURITY

by LUDWIK EHRLICH (*translation*)

In international relations security must be understood as meaning either juridical security that is a condition in which a State that observes the objective law need not fear that its rights as a subject of international law will be violated without redress, or material or political security which consists in the belief that the State in question, regardless of its conduct, need not fear a successful attack from without.



The distinction between these two meanings is highly important.

It is obvious that no State, nor, for that matter, any individual, can count on absolute security, that is, on security such that no one can be tempted to encroach on its interests. A well-organized system of defence of legal rights may, however, reduce to a minimum the probability that the rights of a State will be successfully violated. It is equally true that no system of domestic law can create absolute security. The law cannot guarantee to anyone that he will not be robbed or murdered, it can only guarantee as well as may be that the murderer or thief will be prosecuted and that the injured party or his heirs will, in general, receive compensation within certain limits, by means of the operation of the judicial machinery. With the protection of the individual by means of the civil and criminal law is also linked the action of the insurance companies, which provide indemnities to the persons who have been robbed or to the heirs of those who have been murdered. Nevertheless, this system does not succeed in creating absolute security for either persons or property. It only provides, in a certain measure, security with reference to each attack which might be made, the punishment of the guilty and the payment of damages to the injured party.

Security in the second sense of the word appears to be, up to a certain point, the direct contrary of the kind of security which we have just defined. The difference between the two is that, in this case, a State endeavours to defend its interests even at the expense of other States, and that it is only incidentally that it also tries to obtain for its interests the protection of international law. Security in the first sense of the term, on the contrary, that is, juridical security, consists only in the security of interests protected by international law.

It is clear that a State which obtains an ever greater degree of security in the second sense of the term by an increasingly effective protection of its interests does not necessarily obtain in all cases their legal protection. On the other hand, it may happen that, in order to protect its own interests, a State may encroach upon those of other States, even though the latter are legally guaranteed.

These considerations, purely theoretical in appearance, have, however, an important practical consequence for the contemporary problem of collective security. This consequence is that, when we speak of the problem of security, it is necessary first of all to give a rigorous definition of what is meant by security. Do we mean security relative to interests guaranteed by international law, or do we mean security relative to the interests of a specified State or even of several States, regardless of whether these interests collide or not with the interests, guaranteed by international law, of other States?

In this connection, it is necessary to define the meaning of that "national safety" which is spoken of by Article 8 of the Covenant of the League of Nations. If we compare that article with the Preamble



of the Covenant, we cannot doubt that the term *safety* means the protection of those interests of every State which are protected by international law. The first of these interests is, of course, the preservation of the existence of the State. This is the interest which Article 10 of the Covenant defines when it speaks of territorial integrity and existing political independence."

Security in the legal sense of the term, means the actual protection of the interests which are safeguarded by the existing legal system. In international relations the binding legal system is international law.

International law is the system of legal rules which are binding within a certain group of subjects. These subjects are, in principle, States.

We may neglect the theories according to which individuals also are subjects of international law. It is possible that these theories point the way to the future development of international law which would then lead to the creation of a world State, federal in form which would have individuals for citizens and which would be composed of organizations corresponding to the present States. But it is to be noted that present international practice, as well as the vast majority of students of theory considers that States alone are subjects of international law.

On the other hand international law cannot be assimilated to the various systems of internal law. It is, to be sure possible to note certain points at which the two meet certain resemblances and certain differences. These considerations may even be extremely useful. But it is a fact that, as Gentilis already saw in the second half of the 16th century and Grotius in the 17th, international law differs from internal law and has its own structure.

There is no doubt that the point of origin of international law is the will of the States. This is perhaps a metaphysical concept, but it is accepted in practice as a postulate.

When a State recognises another State as a member of the international community or when it maintains diplomatic relations with it over a long period, it thereby recognises that it is bound to that other State of its own free will by the rules of a law which is common to both States and this law is none other than international law.

The point of origin of international law is then the will of the States and this is true in a twofold sense:

- (1) a State is bound in international relations only by its own will
- (2) it is always bound absolutely by that will

It can easily be demonstrated that this double principle corresponds to the traditional principle of free will which brought forth the theory of the social contract. If it is true that the Roman jurists at the end of the Ancient period were already basing the principle *priori*, i



*legibus solutus* on the fact of popular consent expressed in the form of the *lex regia*, if it is true that in the Middle Ages, during the Renaissance and until the end of the 18th century, the edifice of political organization was built upon the principle of the will of individuals, members of the collectivity, it must be confessed that the fundamental principle of international law rests upon an analogous thought-process. If Professor Anzilotti, for example, recognises the principle *pacta servanda sunt* as the basis of the binding force of international law, it is ultimately due to the fact that here again the problem is to demonstrate the principle that the State in question has bound itself, and to stress at the same time the fact that this engagement has been established by the joint wills of the State which has bound itself and the State in favour of which the engagement has been made.

International law grows out of the fact of the co-existence of sovereign States. The concept of sovereignty is a postulate for international practice, just as is the concept of the will of the State, discussed above. What international law means by the sovereignty of the State is the fact that the States are bound, in their reciprocal relations, by their own will and only by their will, that is to say, the fact that the States have, in their reciprocal relations, all the rights which follow from the fact that they are bound by their will and only by their will. From these considerations follow several consequences, which students of the subject have tried to formulate into a theory, by drawing up a list of what are called the fundamental rights of the States.

In the legal sense of the term, security means the actual preservation of those interests of a State which are under the guarantee of international law, in other words, the preservation of those of its interests which are guaranteed either by the rules of international law as they are accepted by the other subjects of that law, or by certain States which have specially guaranteed them.

The rules accepted as rules of law by all the subjects of international law are those which follow necessarily from the very fact that international law exists and that, consequently, there exist subjects of that law, and from the further fact that the latter maintain legal relations among themselves.

In this category belongs, for example, the right which is commonly called the fundamental right to existence. The subjects of international law are the States which belong to the international community and who are therefore bound in their relations with one another, by reciprocal rights and duties. To the rights of each one correspond the duties of the others. If a State A has an obligation toward State B, and if this same State A were able to destroy State B, it would thereby be able to destroy its own obligation. But an engagement which one can destroy of one's own movement is not an engagement, thus one who is able to destroy his obligation unilaterally is not bound. In other words, the very existence of international



of the Covenant, we cannot doubt that the term "safety" means the protection of those interests of every State which are protected by international law. The first of these interests is of course, the preservation of the existence of the State. This is the interest which Article 10 of the Covenant defines when it speaks of 'territorial integrity and existing political independence.'

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We may neglect the theories according to which individuals also are subjects of international law. It is possible that these theories point the way to the future development of international law which would then lead to the creation of a world State federal in form, which would have individuals for citizens and which would be composed of organizations corresponding to the present States. But it is to be noted that present international practice, as well as the vast majority of students of theory considers that States alone are subjects of international law.

On the other hand international law cannot be assimilated to the various systems of internal law. It is, to be sure possible to note certain points at which the two meet, certain resemblances and certain differences: these considerations may even be extremely useful. But it is a fact that as Gentilis already saw in the second half of the 16th century and Grotius in the 17th, international law differs from internal law and has its own structure.

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law has as its aim to prevent the annihilation of any one subject of that law by another the science of international law often defines this aim as the right to existence.

The arbitral jurisprudence of the 19th century and of the beginning of the 20th made it possible to demonstrate the existence of certain legal rules which are derived, as consequences from the fact that an international community of sovereign States exists — States, that is to say which are bound solely by their own will but which are bound absolutely by that will. However it was the institution of the Permanent Court of International Justice which made it possible for the first time to approach from another angle the problem of the demonstration of the rules of international law.

The jurisprudence of the Permanent Court of International Justice does not, of course, create the rules of international law. It merely calls attention to the existence of this or that rule and this is done on the occasion of the application of the rule in question to a particular case. However the authority of this Court, its independence relative to the parties to the dispute, its permanence, the uniformity of its decisions, are all factors tending to secure the recognition of the rules decided by the Court as rules of international law or at least as rules which it may be presumed, the Court will apply in other analogous cases. Larger the circle of States which uphold the authority of the Court, the larger the number of States subscribing to its Statute, the larger the number of States accepting the compulsory jurisdiction of the Court, the more surely will the jurisprudence of the Court have to be considered as decisive in the demonstration of the existence of the rules of international law and thus it is important to note is true regardless of the form in which the Court issues its decision whether in the form of an award or that of a consultative opinion.

Thus it is now possible to divide the binding rules of international law into two groups

(1) constituted rules, that is, those contained in treaties or by at least several States, together with those which are established by bodies of rules based on treaties of this sort (for example, the Statute of the Permanent Court of International Justice)

(2) declared rules, that is those which are consequent upon the very concept of international law and which are derived from the competent organs of international law — in the latter case as matters now stand, by the Permanent Court of International Justice, which, however sometimes refers to International Law in a particular to the older sentences of the various arbitral tribunals and also by international legal theory.

However this declaration of the rules of international law might be called the ossification of that law.



that a law thus declared develops more slowly than a law which is created directly by the lawmaker, who is able at any time to create new rules. It would, however, be a mistake to suppose that the development of what we may call common law by tribunals calling attention to the fact that a given legal principle involves certain consequences is equivalent to stagnation. Remember the development of the English common law or again that of the common public law in France through the *Conseil d'État* and the *Tribunal des Conflits*. These cases make it clear that the application of recognised principles to constantly changing circumstances and the resulting deduction of rules based on these principles, but not previously demonstrated, may contribute in a large measure to satisfying the need for law in social groups and in particular in the international community.

It is clear, on the other hand, that the States may always, — and indeed, increasingly as circumstances and their needs may require —, create new rules by the negotiation of conventions. However, the best guarantee of juridical security seems still to be the existence of a jurisprudence capable of settling any conflict without waiting for the signing of a special convention to put an end to it.

The problem of the responsibility of States constitutes in this connection a typical example. The Conference of The Hague of 1930 considered this problem in the light of a whole series of studies, the preparation of which had required several years. The materials had been carefully brought together, drafts had been worked out. And yet the work of this Conference did not get beyond the stage of deliberations in commission. In fact, these deliberations were not even completed, so difficult did it appear to secure agreement among all the States regarding the problems considered in the preparatory drafts and in the discussions. On the other hand, between 1925 and 1928, the Permanent Court of International Justice determined a whole series of principles concerning the responsibility of States in case of violation by another State of the interests of a State when these interests are guaranteed by international law. The awards handed down by the Court on this subject refer to concrete cases. Nevertheless, there is no doubt that these awards have had and will continue to have a decisive influence on the conduct of the States in this matter.

There are certain fields of international relations in which it is possible to formulate detailed conventional rules. In the field of international collaboration relative to postal service, telegraph and radio, in matters relating to aid to agriculture, to the protection of literary or artistic property, in a word, in all that concerns the regulation of international collaboration in the fields which concern the physical or intellectual work of mankind, as well as in the organization and functioning of organs common to the States (including international tribunals), detailed regulation may be useful and even necessary.



## SPAIN

(Federación de Asociaciones Españolas de Estudios Internacionales)

## THE NATURE OF COLLECTIVE SECURITY

by GERHART NIEMEYER (translation)

*The Concept of Security*

(1) *Definition* — Just as we become conscious of the sun, of light, or of liberty only when we are obliged to do without them so the concept of security is revealed to us only when security is absent. It is, therefore, only reasonable to ask first of all what we understand by the "insecure." The reply calls to mind a series of facts of experience which are inseparable from this idea of absence of security — the constant menace to property and the home by all sorts of attacks arbitrary judgment, the venality of judges and of employes, disorder and danger in circulation fluctuation in the rate of exchange, economic crises, uncertainty of existence due to excessive population (competition, unemployment frequent epidemics, revolts and civil wars conflicts and wars of foreign States. All these circumstances and others like them, because of the impossibility of controlling them prevent the forecasting of individual and social life in fields in which under normal conditions human conduct can be quite easily predicted. Prediction becomes impossible then in consequence of the irruption of abnormal circumstances an absence of security is created. To prevent these circumstances from occurring, then, very directly concerns security itself.

It is quite obvious that the concept of security includes aspects of human life other than those which have just been indicated. It is impossible to speak of security regarding a scientific theory a conception of world a love affair or a friendship one's own strength the plan of individual life existence after death divine grace etc.

A common element links all these cases with those mentioned. It might be defined as a *subjective state of tranquillity in the absence of disturbing elements in relation to something that man hopes for*. This subjective state interests us only in connection with the social life and by its relations with it. We shall concern ourselves therefore only with security in its relations with human conduct.

A characteristic of all life in common is the tendency to expect what the collectivity expects to happen those forms of conduct which are made up of negative values. We do not by any means hope for everything that according to experience actually happens. Our hope is limited to what *ought to happen* instead. By virtue of official optimism which constitutes the central nucleus of integration, the term "normal" (in the sense of dominant) is used to designate those types of conduct which are of a



for the structure of the society in question, while on the other hand, only the particular conduct corresponding to the types mentioned is considered as *normal* (in a normative sense) In the regularity of such conduct is recognised what is called *social normality*

Social normality — i.e., regular collective conduct according to the social norm — is the collective basis of security Only the normal can be foreseen, calculated, comprehended, and only the far-seeing vision which normality makes possible guarantees to man that state of tranquillity in social relations which we have just spoken of But normality is the basis of security only when it is guaranteed in its turn, that is, when its existence is ensured against the caprices of human nature, the disturbances due to social antagonism and the complications of modern civilisation In this sense, security is the *guarantee of social normality*

(2) *Subjective and objective security* — Of the two definitions thus far obtained, the first designated security in general as a psychological-subjective state, while the second recognised social security as a special quality of the objective social state The two concepts are closely related, since the guarantee of social normality is the indispensable and real condition for the creation of the psychological effect of security The word security, therefore, will include in its content a psychological element (which might be called *subjective security*) and a sociological “moment,” which may be designated by the term *objective security* The two elements form an inseparable pair, in which the first represents the teleological content of the second, while the latter is only the reality of the first No objective security exists, then, except with reference to the subjective, just as the actual measure of subjective security can only designate a certain degree of objective social security

(3) *Individual and collective security* — It is possible to imagine each individual trying to create by himself the degree of security that he deems necessary, by increasing his subjective power During periods of defective social organization and weak public power (for example, in the 14th and 15th centuries) security indeed existed — and very incomplete security at that — only for the individual who possessed resources of power sufficient to ensure his own protection and that of his dependents The inadequacy of such protection was chiefly due to the fact that it offered no security against the intervention of a power superior to one's own But this state of affairs became completely inadequate when the new monetary economy and the principle of the division of labour brought about an extension of economic relations over larger and larger spaces and consequently made necessary the extension of the special sphere of security beyond the domain of individual power It was this necessity that gave birth to the great territorial political organizations, which established their sovereignty and imposed, by the power of the State, the substitution of publicly organised for private



security From this time on what may be called *individual security* (creation of a state of objective security in accordance with one's personal views and by one's own means) is no longer susceptible of realisation. In our day security is possible only in the form of *collective security* that is, as a state of collective life created on the basis of super-personal methods and with the means of social organization.

*Individual security* represents an effort toward the complete satisfaction of subjective and personal needs of security within the limits of real possibilities and for that reason it takes different forms for the various 'subjects' of security whereas collective security like any common action, is based on a resultant, transcending the individual of individual claims and demands. As soon as the private quest of security is replaced by social organization, no possibility remains of according to personal demands more guarantees of individual security than the collectivity is able to provide. There takes place then a leveling both qualitative and quantitative, of individual claims as among themselves in the direction of a common measure of objective security.

Between this individual need of security and the measure of security which in the interest of all, is susceptible of organized realisation, a compromise is reached under the form of a *norm of security* more or less explicitly formulated. The latter is the decision handed down by authority regarding the proportion of organized reality in the 'guaranty of normality' it is, on the one hand, the resultant of the possibilities of the organization that realises the security and, on the other hand of the claims for security constantly greater on the part of individuals. The tension between these two poles gives both the quantity and the scale of collective security.



## B. — DISCUSSION

*The first study meeting of the London Conference, held on Tuesday morning, June 4, 1935, at the Royal Institute of International Affairs, with Mr Allen W. DULLES in the chair, was devoted to the question of the fundamental principles of the problem of Collective Security*

*After a brief address by the Chairman, the General Rapporteur was called upon to speak. M. BOURQUIN began by mentioning the various Memoranda which had reached him after his report was prepared and which, consequently, he had not been able to speak of in that report<sup>1</sup>. He then opened the discussion in the following words*

According to the agenda decided upon by the Preliminary Conference of Paris, the first part of our subject — which concerned the fundamental principles of the problem of Collective Security — falls into two sections: the one devoted to the concept of collective security itself, the other, to the validity of that concept.

As to the definition of the concept of collective security, I think that we shall reach an agreement without difficulty. Nations have always sought to obtain security, that is, to protect themselves against external aggression. How have they gone about it? In the first place, they have tried to organise and to increase their own forces, the natural, instinctive reaction, under the circumstances, is to rely upon oneself.

The principal form that this reaction takes is clearly the policy of national armaments. Then, by a logical consequence, this policy of armaments gives rise to a policy of alliances. Two or three States are menaced, or consider themselves menaced, by the same danger, they unite their forces.

There is already, in this policy of alliances, a sort of collaboration, but this collaboration is scarcely different in spirit from the purely individualistic method. Indeed, a moment's reflection is sufficient to make it clear that the policy of armaments and the policy of alliances proceed from exactly the same conception and rest upon the same principle.

In both cases, the aim sought is limited: the problem is not to obtain collective security, but to obtain the security of one State or of a few particular States. Moreover, the means adopted is simply to establish a certain ratio between the forces of two States or groups of States. In each case, the conception is the same, and the system is necessarily directed against someone, even if it is completely free from any thought of aggression.

Such are the characteristics of what I shall call the individualist solution of the problem of security. What is it that distinguishes the

<sup>1</sup> See above, p. 33



collective solution from this formula? The collective solution is different both in its aims and in its methods

The aim here is not the special security of a few States but the security of all. A collective organisation of security is not directed against one particular aggression, but against war considered as a common danger.

The difference in method is equally striking. The problem is not to establish a given ratio between the forces of one State and those of its potential enemy but rather to set up world-wide or practically world-wide collaboration — as nearly world-wide as possible, let us say. The States will not necessarily all make the same contribution to this united effort: there may be within the system, some degree of decentralisation, of regionalism. In the final analysis everything will have to be integrated in a common effort accomplished for the profit of all.

It is thus that the concept of collective security is generally defined. On this point, our discussions — if any — will not be very extended. But it will be necessary to devote more time to the validity of the concept as thus defined.

The idea of collective security, the organisation of a system of collective security is a new experience which separates us from tradition. Are there profound reasons for trying to induce the States to take this path? Do this conception and this system lie within the domain of practical possibilities? Or have we here a Utopia, an idea which is perhaps seductive but which is unattainable?

That is how the problem stands. It is chiefly on the last point that discussion will take place. My rôle was simply to set that discussion going.

Professor TORNBEE, British Co-ordinating Committee for International Studies

Our Rapporteur has given us a *mise au point* for our discussions with his usual lucidity. He has explained the fundamental difference between the notion of individual security and that of collective security.

I think the most useful thing I can do is to take up the discussion from that point and bring in another contrast: not so much of a fundamental kind as of a historical kind.

One very obvious difference between the two notions as they have appeared in our world, lies in the fact that individual security is a considerably older notion than collective security. As our Rapporteur pointed out, collective security is a very recent idea. Really it is only in our own life time that collective security has begun to be seriously studied as a practical possibility.

The idea of individual security is older. I would like to say in passing that it is not a *very* old idea. It hardly goes back more than four hundred years and four hundred years is a short period even in the



history of our Western World. The notion of individual security would have been quite antipathetic and alien to our mediæval forefathers, who would have regarded it as a frankly immoral and anti-Christian idea, in which I believe they would have been right. At the moment I will simply point out that this idea of individual security has held the field for about four centuries.

Then, rather abruptly, in our generation we find ourselves being compelled to consider, and reconsider, and come back to this new idea of collective security. The question one asks oneself then is, why, when individual security has apparently more or less worked for a period of four hundred years, we should suddenly find that it no longer suffices.

I think the answer, again, is very obvious. It is that the idea of individual security is bound up with the notion of absolute local sovereignty, a notion on which I may quote our colleague, M. de La Pradelle: "*Le faux principe de la souveraineté absolue de chaque Etat*." That quotation comes from a contribution, among the preliminary papers, on the possibility of peaceful change and a revision of treaties, which is, I venture to think, one of the most important documents that have been put into this Conference. "This false principle of the absolute sovereignty of every State."

If it is such a false principle, — immoral, anti-Christian, unworkable — one asks oneself, why local sovereignty has actually worked for four centuries, why the principle of individual security, which goes with it, has been the ruling principle in our Western World during those four centuries.

There, I think, the answer is that, while absolute local sovereignty has been the theory of our international life for four centuries, it has by no means been the practice till quite recently. During the greater part of the modern age, the Western World has been partly insufficiently equipped, and partly too wise and too much under the influence of an older and a better tradition to carry out the principle of local sovereignty and the allied principle of individual security to their extreme logical conclusion. It is only in our generation that we have seen the absolute totalitarian State, — a local totalitarian State — emerge from the theoretical handbooks of the jurist or political philosopher and become a living reality in the actual world.

That is why the present situation is so serious, because a development towards absolute local sovereignty, which has been implicit in our history for four centuries, has in our generation suddenly become a reality.

I hold — it is controversial, but I throw it down for discussion — that this principle is essentially unworkable, and that as soon as the principle is really put into effect — as it is being put into effect in our generation — we are bound to seek a remedy for it. If absolute local sovereignty and a complete application of the principle of individual



security had been in actual operation during the whole of the modern age, disaster would have overtaken us long ago.

Then let me make a further point from that, that when once you have a world consisting of sixty or seventy local States, which are putting into practice complete local sovereignty then such a condition of international affairs is by its very nature transitory. One can prophesy with assurance that, a hundred years from now or fifty years from now, if States continue to try to be absolute in their local sovereignty there will not be sixty or seventy separate sovereign States in the World there will be far fewer of them — perhaps only one!

Often in life, I think, one finds oneself in a situation something like this — that one can see that there is a certain goal ahead of one which is inevitable, which one is bound to travel to — and I think in our international life the inevitable goal now ahead of us is the abolition of absolute local sovereignty — but often in such a situation one still has a choice of the roads by which one may approach the single inevitable goal and, of course, it makes the whole difference very often, which of the roads we choose. The single goal may be inevitable the alternative roads offer us a choice and it is desperately important to make the better choice rather than the worse choice between the alternative ways of reaching the single goal which we must ultimately arrive at.

If our goal is the disappearance of local sovereignty — and I think that, in a world armed with the powers of technique and organisation which we possess, it is hardly a controversial thing to say that communities armed with those powers cannot exist side by side in the same world, for long without disaster overwhelming us all, if they claim absolute local sovereignty — if then, absolute local sovereignty is doomed to disappear, is bound to disappear what are the two alternative roads by which we may approach its disappearance?

I think that, as always there are roughly two ways. One of them is evolutionary — a way by agreement and forethought and non-violence. That is the road of collective security. If one wishes to solve this problem of reaching some kind of world order in a peaceful way then collective security is the road. It is because we rightly feel the immense importance of travelling by that road and not by the other that we are brought back again and again to this insistent question of collective security now. If we can achieve collective security the abolition of sovereignty will be qualified and relative.

We must face the fact that collective security means a diminution of local sovereignty but along this road the diminution will be gradual. The present local States of the World will fit themselves by voluntary agreement into a world order in which they will each retain their local culture their traditional life their local administrative autonomy. If local sovereignty is got rid of in that way the process will hardly be felt as a loss or a sacrifice.

So I would make an appeal to those present who stand for the view







The facts seem to show that throughout the whole course of history the methods of individual security have predominated. There were slight modifications in the Middle Ages but I question whether the Crusades could be regarded as a substantial modification of individual security or whether in practice, even the feudal system and the Holy Roman Empire represented any great departure from that method.

The interpretation of history on the lines of individual methods of security increases the magnitude of the problem before this Conference. We are investigating the possibilities not of reverting to a system which was in operation four hundred years ago, but of changing practices which have been consistently applied from the beginning of history down to our own time.

In approaching this task it will be recognised that there are new factors in the situation, such as the development of means of transportation and communication, and the consequent growing economic and social interdependence of the various countries. These new factors together with the greater destructiveness of modern methods of warfare, make specially urgent the establishment of a system of collective security.

Professor FRANCESCO COPPOLA, Centro Italiano di Studi Internazionali (*translation*)

I should like to be allowed to reply to the two speakers who have preceded me.

Mr Toynbee among his gloomy predictions concerning the future of the world, held up before us the scarecrow of a monstrous unity in which the world would be dominated by a single nation. Such a unity is not so fabulous nor so monstrous as it may appear: it has already existed in the past. Did not the Roman Empire dominate the whole of the then known world? And observe the irony of history: the only period of two centuries of peace that the world has enjoyed was precisely during the two great centuries of the *pax romana*.

Mr. Richardson, for his part sees a very great new fact destined to transform once again the foundations of the world and of history in those novelties, the modern means of transport and of communication. But all that is purely material. Now the decisive forces and motives of human action — and therefore of history — are not to be found in material things: they must be sought in the mind, in moral forces in the spiritual life of man: mechanical devices, means of transport are means for realising the external forms of civilisation: they cannot be its essence.

The essence of civilisation is the mind of man: it is his view of the world, of life and of the value of life: it is a system of ideas, of sentiments, of purposes which grows more perfect: which from time to time becomes crystallised in legal systems and which then adapts its specific way of



life to material means. The latter are new in history, I agree, but I do not regard them as of decisive importance.

*Professeur Général et Rapporteur Général de l'Assemblée des Hautes Études Internationales (France, 1948)*

*Professeur Général et Rapporteur Général*

M. RENE CASSIN, Commission française de Coordination des Hautes Études Internationales (*France, 1948*).

I should like to take as my starting-point a position in regard to which agreement is certainly possible, namely, the definition of security. It has already been said that the basis of security is primarily subjective. That is quite true, in my opinion: there is no security if people do not have a feeling of security.

But side by side with the subjective element there is — and several memoranda have stressed this point — an objective element in security. It is possible, for example, for nations to have the illusion of security although the objective facts of the world make it apparent that they are not really secure.

These objective factors are of many kinds. They are not only juridical, political, economic. There are also moral factors which, more universal than any individual nation, contribute to create or to destroy security.

Consequently, I consider security as a complex idea, at the same time subjective and also material, universal and objective.

To turn now to collective security, I agree with the words of our distinguished Rapporteur General, M. Bourquin: collective security is a goal, an ideal, and at the same time a method, at least we here regard it as such. The whole problem is whether, in turning to this method, we are not making a mistake, whether we are not turning our backs on the most evident realities.

For my part, I must thank M. Coppola for having compelled us to examine this grave question once more, even if we do not reach an agreement, our colleague will have done us all a great service by obliging us to ask ourselves this question again at the threshold of our debates.

However, M. Coppola will not be surprised to find that I do not agree with him. Taking our stand not on strictly juridical grounds, but on human grounds, the psychological and sociological grounds which he himself has chosen, we must push on, cost what it may, toward an organisation of collective security.

I adopt first of all the psychological standpoint. I put it to our colleagues whether they, whether the ruling classes, those who in the various countries are educated or possess material power or the power to command, are sufficiently alive to the psychological revolution which has taken place in the countries which took part in the last war.

<sup>1</sup> See above, p. 144.



Bear in mind that, by the system of the absolute sovereignty of the States which had been in existence since the 16th century we reached such a crisis that millions of men in each country met with death. How can it be imagined that on the morrow of such a cataclysm the state of mind of the survivors could be the same as before the war? An unconscious revolution has taken place among the masses it is the task of the chosen few to bring out its significance, to draw its lessons. They must realise that a cataclysm such as that which we have witnessed could not occur a second time without shaking human society to its depths.

A moment ago M. Coppola painted a magnificent word-picture of the Roman Empire. We are sons of the Roman civilisation, so far as private law is concerned but ask yourselves whether private law will still be possible in the world if the principle is accepted that human life may be destroyed and that millions of men may be called upon to give their blood. When the principle that human life is to be respected is no longer sacred, what other principle can be? Why expect the principle of the family or that of property to be more respected than the others?

This brings me to a first conclusion to propose that we return to the state of things with which we were familiar before the war is to propose a return to anarchy. It is only in appearance that this anarchy will be limited to international law it will exist also in the relations within the States, in the relations between individuals. If you do not create an international law you will have destroyed national law private law itself.

Under these conditions, we cannot possibly be satisfied with a return to the formula of absolute sovereignty. It is possible that we may at present appear to be conservatives, because we stand guard over certain institutions born of the peace treaties. But the real conservatives are those who would make us turn back to the time before the cataclysm and who would restore, with the old absolute sovereignties the view that each human group can find security only in its own strength.

If we look back to the origins of all societies we shall find that when ever local groups have found it desirable to form themselves into larger federations, the arguments urged by M. Coppola against international collective security have been invoked against collective security on a municipal or provincial or inter regional scale.

It follows that the principles set forth by our colleague are potentially destructive of all human society and we who are not willing that the world of to-day should be like the pre war world cannot possibly subscribe to such principles.

Thus it is not we who are trying to swim against the current of history it is M. Coppola and his theories. And now abandoning the purely psychological standpoint I offer a sociological argument.

For all human societies there are two laws which must be followed. The idea of mankind as a community was at first conceived only by a



few exceptional men, such as the founders of religions, who were conscious of certain ties uniting all the members of the human race. In the course of time this idea of mankind as a community gained wider currency. After the Revolution of 1789, during the 19th century, it made considerable progress. Before the Great War, there was already a human community in embryo.

What is our purpose to-day? It is to bring this embryo to birth, to rescue it from the limbo in which it was imprisoned, and to develop it into something more substantial which may make the world fit for human habitation. That is why we believe that, imperfect though it may be, the League of Nations is an attempt at collective security such as had never before been made.

It is true that we have suffered many disappointments. On this subject, I share the opinion held by many: if we were merely to read through the decisions that the League has come to in the course of the past fifteen years, we should perhaps be justified in yielding to despair. But we are not responsible merely for our contemporaries, we are responsible also for those who will come after us, and we have not the right to close the post-war period by a declaration of bankruptcy.

We must, therefore, try to see in what direction mankind is evolving, and on this point I recall the profoundly true remarks of Mr. Toynbee, who said a moment ago that that evolution was irresistible, that the movement toward the abolition of sovereignties was inevitable, the only question is whether destiny will be accomplished by revolution or by evolution.

Mr. Toynbee spoke in favour of evolution. I share his feeling, but I regret that the evolutionists have not been able to find bases of agreement so as to try to trace the route to be followed by this evolution. The problem, moreover, is not to trace that route in the abstract, we must rather accept the historic realities, which we cannot leave out of account, beginning with national realities. We feel their force more than ever in these times of crisis when the nations are drawing back within themselves, a force which is extremely harmful if it is not placed at the service of co-operation and of collective security. But this same force may be beneficent.

That is why we must make use of the nuclei which have already been created. In the development of institutions, there is a sort of interplay of action and reaction between realities both material and spiritual and technical devices.

We have not the right not to recognise the tremendous progress realised by the creation of the Permanent Court of International Justice. An effort which had been going on for a thousand years has been crowned with success. The technical device may, in its turn, produce an evolution in men's minds.

It is by leaning at once upon technical devices and upon human realities that we shall advance, like the workman who, in climbing to the



summit of a lofty crag with empty space beneath his feet, advances now by one wall of the chimney now by the other. We know that there is an abyss beneath our feet but we must not hesitate to climb *in spite* of it.

As to the meaning of this evolution, the most serious criticism that could be addressed to us would be to say that we busy ourselves with collective security from above, as though it were a roof resting on no foundation. If this criticism were justified, our conduct would indeed be illuminism and might give rise to dangerous illusions. But we are not guilty of such errors. We believe that collective security is the crown, not of legal provisions, but of all sorts of vital elements.

The League of Nations must be not merely a legal organism destined to prevent bloody conflicts from arising but also the centre in which the nations shall meet to establish a peaceful life in common, to exchange products and ideas to ensure human circulation and to make it possible little by little for the various collectivities to live side by side in peace.

One argument has been presented which is not without force: the idea of collective security leads first to the idea of sanctions and then to the idea of war as a sanction: such a war holds no interest for the citizens of a State, whereas they are refused the right to make war for vital national necessities. I do not accept this theory. If it were true it might be said that when, in a society, a man or a group ceases to maintain warlike relations with neighbours and has confided to a social organ the task of preserving order and peace, a collective police operation which might be undertaken by the society would not interest him because it would be a war against nature: only individual defence against an aggression would be according to nature.

This idea of necessary altruism must be transposed. It is in the interest of the weak that order was created in societies. It is in the interest of weak societies, of weak States that the League of Nations and the organisation of collective security will be most effective. No police operation undertaken to defend international obligations would shock the deep feelings of mankind.

As to what attributes should be given to this international organism the wisest plan would be following the line of least resistance to give it judicial, legislative and executive powers: the latter in the form of economic organisms and finally police powers. But here we touch the heart of the question and on this problem of security proper the evolutionists are no longer agreed.

Some of them remain in favour of the first form: the alliance of two or three States which are faithful to the Covenant and act as policemen for all the nations. This solution is not ideal. It would be better if there were, within each national collectivity what I should call volunteers for the observance of the Covenant. When the nucleus of an international police has thus been created, even though it be weak there will be a technical organ comparable with the Permanent Court of



International Justice, whose decisions it will carry out, and, in its own field, it will be the source of further progress

All things considered, we have no reason to be discouraged, either from the psychological or from the sociological angle. We must not give ourselves up to the mysticism of organisation, we must not fall into that illuminism which has been criticised, but we must realise that a good organisation, placed at the service of the will, of the reason, of the interests of the national societies, is capable of leading to good results. In any case, there is one thing that I shall never accept, — the fatalistic belief that anarchy is inevitable

Professor OUDENDIJK, National Council for the Netherlands and Netherlands-India of the Institute of Pacific Relations

The nations, the peoples, want peace. I have read that during the war somebody enquired about the spirit of the German army, and received the reply, "From privates upwards to captains included, they are all pacifists." I dare say that the same remark might have been made of all the other armies. The people's spirit and the general outlook upon war, has changed since the Great War. On this point I think there exists no doubt. The world now knows what war means. It knows that it is no longer a battle between armies but between whole nations.

At the same time science progresses irresistibly. Nothing can possibly check it, and nothing can prevent its being applied for military purposes. The inventions of ever more powerful means of destruction are bound to continue to proceed from the peaceful scientific laboratories. One may regret it, it is a fact.

But in this very frightfulness lies a cure. The time will come when war will be so terrible in its effects, that a nation will no more be ready to resort to it than it would now, for instance, be willing to commit suicide on a national scale. Both will be equally inconceivable. We may be nearer to this point already than many of us suspect.

Meanwhile we can approach it considerably by increasing the terrible risks for any would-be war-maker. Here I have to refer to the United Kingdom Memorandum, No. 1, Part II, which advocates Regional Pacts<sup>1</sup>. To my mind here lies one of the principal roads that may lead to the happy valley of security.

But it must not only be fear of war that makes the nations cease regarding each other as potential enemies. There must also come a positive change, and they should see each other as collaborators in the common human workshop. The world is now drifting foolishly towards the caricature which Adam Smith describes in his "Wealth of Nations" of the workman who manufactures a few pins per day at

<sup>1</sup> See below, p. 355



great cost, whereas by division of labour the fruits of industry would be within their natural channels.

Cobden told us that behind the customs barriers are the guns. Here lies another road which might and which ought to be explored in the interest of collective security for it will lead to moral disarmament. However thorny and full of stumbling blocks I feel sure that that path ought to be cleared of all the tangle of tariffs, quotas and restrictions so that frontiers fade away before the happy valley of security to which I referred, can ever be reached.

Now one might ask, if war becomes so terrific in its immediate results that recourse to it is folly must one for ever sit down under what is or what becomes a glaring injustice from which no amount of patriotic sacrifice can liberate one's country or one's people any more? To put this question is to answer it. Certainly not! Therefore and because treaties must remain treaties unless altered in a generally recognised manner I am in favour of the idea of the creation of a Court of Equity attached to the Permanent Court of International Justice.

Finally when working for collective security we must begin at the beginning and that is in my opinion Europe. This may not sound particularly idealistic, but it seems practical. Some dozens of nationalities live there together who through the ages have been fighting one another. Let security be established there first. Once the fear of war is removed from Europe, the world problems will be easier to face and to be dealt with.

Mr C. S. MACINNES, Canadian Institute of International Affairs

I am sure we are all grateful to Professor Coppola for the points to which he has directed our attention.

Let us consider briefly what he has put forward. The arguments written and oral, as I understand them are as follows — the idea of collective security is a false idea. It is an idea which will not work, while on the other hand there is an available alternative which has been and is practicable.

In the first place as to collective security being a false idea, that contention, when analysed, really comes to the second contention that it is an idea which will not work, because as His Excellency has said, he himself believes that matters of the mind have a power greater than any other. Therefore the fact that collective security may be an idea is not fatal. The contention must be that the idea is a false one.

How then did Prof. Coppola set out to show that it was false?

It seems that he relies on the fact that this idea when put into practice as it has been put into practice since the war has not been efficacious or entirely satisfactory. That fact all naturally must admit. But is that fact necessarily conclusive inasmuch as the experiment has been tried for only such a short time? Because this system has been in



force only for some ten years. Surely therefore, it cannot be fair to test it on such a short period as compared with the previous balance of power system.

Further, this new idea, this young child, before reaching maturity has been exposed to tests greater than could possibly have been anticipated, and is it therefore reasonable to condemn anything so young simply because in the initial stages it may have been unequal to the unexpected and undue burden cast upon it?

Further — as was pointed out by the Rapporteur — Prof. Coppola's argument is based on the contention that there is, and must be, and can be only one sanction, and that is the sanction of force. Let us consider on the other hand what has been taking place in the past few years, and the alternative sanctions that have been suggested. Who is there who can say now that those sanctions may not collectively have the necessary weight?

As is indicated in the very thorough memorandum from the United States, for which we are all so grateful,<sup>1</sup> there are the sanctions of non-recognition and so forth. It may be admitted that such a sanction in itself may not be sufficient. But is it not more than possible that such sanctions coupled with other sanctions may have the necessary power to make the collective system operate satisfactorily?

What is the alternative? Professor Coppola's memorandum<sup>2</sup> says that there are and always will be great Powers and small Powers, and that we must assume that those great Powers will provide for peace and that the smaller Powers will be grateful.

Surely the experience of all the world is that "what the gods give us, they sell us." The small Powers will be at the mercy of an autocracy. This autocracy may or again may not be benevolent. Further there are few nations, however small, who wish to accept obligations without contributing their share. Therefore, while admitting the value of the *Pax romana* and its stabilising influence, I feel confident that it is not what the world to-day — certainly speaking for smaller people — is looking forward to.

I think that it is not necessary to elaborate the argument in view of the material on record, but that we can be satisfied that we can carry on with our Conference, having listened, as I say, with gratitude to the remarks and the arguments of Professor Coppola.

Professor MARCUS VON LEITMAIER, Konsularakademie, Vienna (*translation*)

In the remarkable summary presented by the General Rapporteur, we find a statement to which, I think, we can all assent, namely the declaration that

"collective security necessarily includes, — by definition, we may

<sup>1</sup> See above, p. 100

<sup>2</sup> See below, p. 144



say — a more or less far reaching renunciation by the States of the use of armed violence as an instrument for making their will prevail.

While this definition, by adding the word "armed" to the word violence, limits to a considerable degree the object of our conference, I fully understand the reasons for that addition. For even if it be admitted that the concept of collective security does not require the organisation of a really universal system, it presupposes nevertheless the collaboration of a number of States sufficiently large to give it a quasi universal character. Now it is the danger of war open or disguised which alone, in the opinion of most of the nations, interferes with the security of the world. It is therefore impossible to secure the necessary collaboration of the largest possible number of States except by discussing the means of preventing the scourge of war itself.

I hasten to add that I have not the slightest intention of raising objections to this definition.

I should like, however, to call attention to the fact that, in several parts of Europe, nations and their leaders are seeking to increase their national security by protecting themselves not only against acts of war like aggression, but also against certain forceful acts which, in their opinion, endanger the territorial integrity or the political independence of their country although there is no question of acts of armed force. It is true that the path chosen for this purpose is not — thus far at least — that of collective agreements but that of bilateral or regional pacts; but it is clear that any action tending to increase security in any part of the world automatically increases universal security and that bilateral or regional treaties, though they are not by themselves a sufficient instrument for the preservation of collective security reinforce quite effectively the means which permit the attainment of collective security.

I trust then that I shall not be overstepping the limits of our subject if I offer a few remarks regarding this new movement which can be seen to be taking shape.

The acts against which this movement is directed may be defined as acts of intervention which, although the intervening Power makes no use of armed force endanger the integrity or the political independence of a State. The Statesmen of these countries have chosen to designate these forms of intervention, the French term *immixtion*. It appears to be their opinion that the use of this term in itself characterises the act in question as an illicit intervention.

I am not French and I do not take it upon myself to decide whether this distinction between "intervention" and "immixtion" is well founded. I hasten to add that the forms of intervention in question are generally recognised as illicit under the rules of international law so that there is no reason for taking up the well known controversy in regard to the question under what conditions intervention is permitted and under what conditions it infringes international law.



One of these two cases of "immixtion" consists in interference by the Government of one State in the internal affairs of another State

The other case includes any action tending to favour agitation or propaganda having as its object the violation of the territorial integrity or the forcible transformation of the political or social system of a State

In this case, at first glance, the element of force seems to be absent from the relations between the Government which is interfering in the internal affairs of another State and that State. Accordingly, some writers do not consider propaganda as a form of intervention, since propaganda does not generally make use of force

But in the cases which I have just mentioned, we are not dealing with propaganda pure and simple. We are dealing, on the contrary, with propaganda which aims at changing by force the political or social system of a State. The element of force is therefore present in this case and has merely changed its place. It is still force which the intervening State employs to reach its goal, if not directly, at least indirectly

The movement tending to the repression of these two forms of "immixtion" found practical realisation for the first time in the treaty concluded, on November 29, 1932, between France and the U S S R. According to Article 5 of that treaty, the Contracting Powers undertake to abstain reciprocally from the types of intervention which I have just described

Please note that this treaty has as its title "Pact of non-aggression," that its aim — as is expressly stated in the preamble — is to consolidate peace as well as to confirm and make more definite the General Pact on renunciation of war, and that the provisions relative to the prohibition of "immixtion" are mingled with others which forbid acts of aggression. This pact, then, unquestionably aims at increasing security

Still more recently, two great Powers, France and Italy, as you are certainly aware, took the step of recommending to the States chiefly concerned the conclusion of an agreement of reciprocal non-interference and of an undertaking, likewise reciprocal, not to foment nor to favour any action having as its object forceful measures directed against the territorial integrity or the political or social system of any of the contracting countries

This time, the provisions forbidding "immixtion" no longer form a mere annex to the provisions relative to aggression, but constitute the very heart of the treaty, which, though it likewise renounces all acts of aggression, is to bear the name, it appears, of *Traité de non-immixtion*, which proves beyond a doubt how important the interested parties consider the prohibition of "immixtion"

I have tried to show that the authors of the conventions which I



have just been describing are trying to devise a special and, in their view particularly effective means of increasing security in certain definite regions that they are therefore working toward a goal which is identical with ours, since collective security is, in the final analysis, merely a complement to individual security. I feel, therefore, that we may all follow the development of this new tendency not only with interest but also with complete approval.

Professor DJUVARA, Rumanian Social Institute (*translation*)

.. I agree with M. Coppola that the basis of historical evolution is to be found in spiritual values. It is those values I am profoundly convinced, that lead mankind. They may act upon political realities, upon economic realities but it is always spiritual values that are in control. The object of a given legal right may be an heritage, an immediate interest but it is a legal right, and it is for that reason that one acts. Man yields his obedience to an idea of justice to a moral idea and these are among those spiritual values which constitute the ultimate source of human activity.

But are not these spiritual values national in character? On this point, I venture to refer to one of the most convincing thinkers of the present era, the French philosopher Bergson who, in one of his most recent works made a very fruitful distinction between the morality and the justice of closed societies and the morality and the justice of open societies.

There is no absolute morality. Morality and justice progress in proportion as the societies to which they apply are more and more open. The ideal, for Bergson, is a mysticism which is not to our present purpose but rationally the idea of morality the idea of justice develops as societies become more and more open.

Thus a band of brigands has its own justice and its own morality viewed from within, this situation may be perfect but from the national viewpoint from the viewpoint of society it is contrary to justice and to morality.

Similarly there are national egoisms which from the standpoint of the closed society are perhaps just but spiritual progress consists in advancing toward a society as open as possible. Just as we condemn the justice and the morality of a band of brigands so we may condemn at a given moment a morality which is fiercely and selfishly national.

Such are the philosophical bases, if I may say so of the conception which we are trying to realise. Human beings, individuals, are organised into societies. It is impossible not to admit that beings organised into societies, into collectivities can in turn organise themselves into legal and moral societies of a higher order. The problem which then arises in international law is the old problem of sovereignty with which everyone is familiar though there are few specialists



who would accept the definition of sovereignty as it has sometimes been stated

The very idea of sovereignty must evolve. To be sovereign does not mean — whether in internal law or in international law — to have the right to do anything whatever at any moment whatever, to be sovereign means to be limited by law and by justice.

The idea of organising collective security is not, then, Utopian, provided we do not fix our attention on the ultimate goal, which is obviously far distant, and provided we endeavour, by practical means, to secure the progress of that organisation toward the ideal which we all have in mind.

Professor LUDWIK EHRLICH, Central Committee of Polish Institutions for Political Science (*translation*)

We have just returned from a series of voyages, after a tour in the ancient world, in the Roman Empire, we visited the Middle Ages, and then made an expedition into the future, where we discovered a single State taking in the whole world. This State appeared under two forms: either as a federation of States in which all the States preserved their autonomy and their culture, or as a federation dominated by a single nation, which itself did not necessarily belong to occidental civilisation.

We have heard various problems discussed with authority and force, and first of all the question has been raised whether war is indispensable.

This question evokes a problem which in my opinion cannot be considered except with a certain degree of relativity. There is a close analogy, on this point, between the life of States and the life of the individual. There are individuals who are satisfied to be married and to have a wife of their own, but one sometimes meets a man who is interested in the wives of his fellows, and who manifests that interest more or less aggressively. The former may be said to behave virtuously according to religious views which everyone holds, regarding the others, it will be said that love is like the wind, which bloweth where it listeth.

The problem of security is somewhat similar. Allow me to speak for the moment as a jurist and to come back to the problem of security from a drier viewpoint than that of the speakers who have preceded me.

In my opinion, collective security has no meaning unless it gives to each State within the collectivity the belief that it is secure in the preservation of its political independence and of its territorial integrity. However, in this connection, may I be allowed to reply to an argument which I heard in the mouth of our distinguished General Rapporteur.

Collective security, said M. Bourquin, is directed against war. That is correct, say I, but it is not the whole truth. I agree with



M. von Leitmaier in thinking that collective security is something which defends the States against all aggression, even if the aggression in question does not take the form of war with the use of armed force. There are many aggressions many illegal struggles, which constitute unendurable pressure, but which, nevertheless, cannot be designated as war

Professor ANTONIO DE LUNA Y GARCIA Federación de Asociaciones Españolas de Estudios Internacionales (*translation*)

Mention has been made of individual security in the past. Some think that it has existed, others the contrary. In point of fact, individual security has existed, but only in so far as collective security existed. Without collective security there is no individual security possible, because then each individual is thrown upon his own resources and, even if he is stronger than any other individual, he has to reckon with others who though individually weaker, may be if united, stronger than he.

In fact, it was in order to provide individual security by creating collective security that the State came into existence. Consequently I do not agree with M. Coppola when he declares that collective security is impossible for we already have examples of collective security within the States

I agree, on the other hand, with M. Djuvara that in the international community there is community solely between sovereign Powers. The idea of sovereignty is not obsolete to-day as in the history of the occident for the past five centuries, the States are sovereign Powers it cannot be otherwise. But since sovereignty is not obsolete there arises a truly dramatic situation in the international legal order made up as it is of territorial units each of which is sole master of its own decisions and actions namely the impossibility in such an order of ever realising — as M. Niemeyer has shown in his memorandum on "The nature of collective security" — a *security of the international society* only an increase of *national security* is possible. If international law wishes to perfect itself it must begin by committing suicide.

Law is the crystallisation of the future. Security requires that the future be calculable but life is in constant evolution, so that law comes into conflict with justice by sacrificing justice to security we reach the point where the latter also escapes our grasp

No internal law any longer claims to be *lex in perpetuum valitura* and the method of creating law by majority vote serves as a constant palliative to its rigidity. In international law on the contrary perpetual validity is specified as far back as the Treaties of Westphalia and the unanimity necessary to the creation of international law — necessary because such law constitutes a legal bond between sovereign Powers — gives it inevitably a static character



Moreover, international law cannot fix the status of its subjects as any law does which is constructed on hierarchical principles; for the States are, for international law, elements, beyond its power to shape, for international law, all States are equal, it recognises only the concept of the State, not that of individuality; it cannot therefore do justice to the individual. How could international law tell us, for example, whether or not it is just for Japan to settle its excess population on the shores of the Pacific, whether or not it is just that a certain State should be able to obtain the raw materials which it lacks, whether or not it is just that a certain other State should have a strategic frontier, — if international law cannot decide on the *existence* of the State?

Peace by law is, then, a mirage. Not only is justice incapable of achievement, but it is even impossible to determine to what extent a State ought or can do one thing or another. So long as there are individualities, there will be anarchy. Agreement can be reached for the transmission of letters and packages, but when a State has a vital interest at stake, there is not even a rule of international justice to decide between the interests in conflict.

*After the address of M. DE LUÑA Y GARCIA, the Chairman declared the meeting adjourned. The discussion was resumed on Thursday, June 6, in the course of the Sixth Study Meeting of the Conference, the Chairman, Mr. ALLEN W. DULLS, called upon Professor VERZIJL to speak.*

Professor J. H. W. VERZIJL, Netherlands Co-ordinating Committee for International Studies (*translation*).

. It is possible to consider the problem of collective security as though from an airplane gliding at a great height above international relations and national passions, it is possible to rise even higher, into the international stratosphere and to look at those relations and those passions through a telescope. Fortunately, we have not done so. But I wonder whether we have had the courage to face the facts as they are, whether we have not after all idealised the political situation and the facts of international life.

What are, then, the facts before us? The truth is — and it is useless to mask it — that these facts reveal a frightful absence of goodwill on the part of the nations, and that, in international politics, the States are always ready to set up façades behind which they vainly try to conceal their national selfishness.

One of the most striking examples is to be found in connection with the submission of disputes to peaceful means of solution, particularly to arbitral or judicial settlement.

It is true that the Permanent Court of International Justice exists, but what does it amount to? The optional clause still lacks too many signatures. Even the States which have signed have not yet all ratified. Others — and they are many — have subjected their ratification to so many reservations and of so serious a character that in



practice that ratification loses a large part of its value. Even in the case of States which have ratified the optional clause without too many reservations, what happens? In many critical cases, they refuse to come before the Permanent Court they set up all sorts of façades behind which to hide their unwillingness to do what they ought to do according to the signature which they have given.

When recourse is had to the Permanent Court, the issues are often drawn in such a way as to prevent the Court from taking cognisance of the international question in all its breadth. When a decision is reached, once again it is too often observed that the States have a tendency to avoid obedience. I do not say that any State has gone so far in the face of a decision of the Permanent Court, but there have been recent examples of arbitration in which States have practically refused to submit to the decision.

And what I have just pointed out with reference to compulsory arbitration is equally true when it comes to applying in good faith the fundamental prescriptions of the Covenant of the League of Nations. Thus the States are not willing in all circumstances to fulfil the obligations which follow from Article 10 of the Covenant. When their national interests seem to require it, they violate it. The States do not wish, either to conform to the obligations imposed by Article 11 and, in order to justify themselves in advance, they have invented the ridiculous interpretation which requires for a valid decision of the Council of the League of Nations, absolute unanimity of the votes cast, including those of the members who have already begun to violate the Covenant. Too often the States are inclined to evade both the letter and the spirit of the undertakings implied in Article 15. And finally they obstinately refuse to conform to Article 16. Always the same unwillingness. Under such circumstances what can be hoped from a system of security which presupposes, if it is to function regularly a strict fidelity to undertakings voluntarily entered into?

Oh, I know very well that this absence of goodwill can be hidden behind magnificent façades. One may invoke the sacred mission to preserve peace in the Far East or the mission of saving European civilisation against the nations which are not yet civilised. Oh, that fatal illusion of the superiority of our Western civilisation from the moral point of view! One may try to hide all these imperialist appetites, all these impulses to extend one's power at the expense of one's fellows behind the national honour — that time tried pretext — or behind the pretext of vital interests.

It is possible also to construct in support of these tendencies an historico-philosophical system — to say that strong States have a right to impose their will on weak States that weak States may become strong and vice versa, and that one must draw the consequences of this evolution. But I wonder then if all this does not amount to saying that might makes right. Does the fact that one is able to do a thing



give one the right to do it? Is not this an idealisation, in a nationalist sense, of the lessons of history, a glorification of force? Is it not a revisionism which must be rejected by all those who are occupied with the fostering of international co-operation? This type of revisionism is the thing we dread the most, and international law can never recognise it

From what I have said, I draw a conclusion — a serious one, in my opinion — there is not the slightest hope that we can ever achieve a system of real and genuine collective security until the States prove that they are ready to live up to the undertakings which are the most fundamental, the most elementary in international society

In my opinion, this conclusive psychological experiment prevents us from believing in the possibility of realising in the near future the idea of security for all, both strong and weak. The only way out is to proceed step by step, beginning with the elements which are the most fundamental and which offer the best proof of goodwill and of absence of goodwill

To my mind, the question centres primarily in the problem of the order in which the different ideals of international society should be realised. In this connection, I am convinced that it will be necessary first or all to concentrate our forces on the veritable realisation of certain quite fundamental ideals, among which I place, on the one hand, the compulsory submission of all disputes whatever to an arbitral or judicial tribunal, and, on the other hand, the absolute renunciation of force, except when specially authorised by the society of States in order to execute a regularly reached international decision

Under the discouraging conditions of the past few years and of the present moment, one might be tempted to be so weak as to suggest postponing our discussions for, say, half a century. But I do not wish to yield so far to my scepticism regarding the present state of evolution of the famous "international spirit," which alone will be capable of saving mankind from the continual threats of war. I therefore confine myself to repeating that the best thing we can do is to endeavour to secure the universal acceptance of these two requirements which are indispensable to any satisfactory organisation of international society, namely

(1) that the States accept at last the formal and absolute obligation to submit all their controversies to an international tribunal;

(2) that they renounce for the future all legal possibility of making war in order to obtain justice for themselves, unless expressly authorised by the society

To get these fundamental principles accepted by all the nations seems to me to be a minimum programme worthy of our efforts. So long as the States are unwilling to put them into practice, there is no hope that the international situation will improve, for their attitude with regard to these elementary requirements is the best



touchstone of the sincerity of their desire to co-operate in the final establishment of a genuine international legal order

His Exc. Professor FRANCESCO COPPOLA, Centro Italiano di Alti Studi Internazionali (*translation*)

It has been said that, after the Great War there was something new in the world — the desire firmly to establish peace. But there has been that same desire in the world after all great wars. To confine ourselves to modern history is every one still aware that, in a protocol of the Treaty of Westphalia, provision was made for concerted action against any aggressor who should again disturb the peace? The one difference is that the term used was "offender."

Another attempt at the stabilising of a pact which might be described as regional, of the same type as those which we know by that name, occurs after the Napoleonic wars. The Holy Alliance, a regional pact did not confine itself to protecting the interests of the contracting parties — it undertook also to act in Europe as an international police. This pact, though it was concluded among the greatest Powers of Europe, was unable to stand against the force of history calling for a change. That force was called, in the last century the force of nationalities — and since the Holy Alliance was formed, the world has been made over by war — by revolutions and by other means.

To-day we observe the existence of a new mythology born of the war and of the peace which followed. But from the beginning there appears an ambiguity which was revealed even during the war.

The Great War was fought, on both sides, for national and imperialistic reasons. But for reasons of popular appeal of public opinion, of international demagoguery it was transformed into a sort of battle of the gods, a war of the Titans — on one side were the Titans, the wicked ones — imperialism, militarism, violence — on the other side the gods of the sky — virtue, peace, right... The combat went on for a long time, until finally the supreme judge — Jupiter — was called in to decide between the Titans and the gods. Unfortunately it was only President Wilson.

After acting as judge Wilson transformed himself into a gangster after identifying the guilty — he undertook to punish them. And we come to the peace — the beginning of the post-war ambiguity.

This peace — and this was normal and inevitable, for it has always been so — was a victor's peace — the victors imposed peace on the vanquished. I do not say these things with the intention of offering a political, historical or moral criticism — it is natural that the victors should impose peace on the vanquished.

But there was President Wilson. This peace could not be allowed to appear as a victor's peace — it was presented as a peace of impartial objective justice — of universal justice.



And then there were the Statutes and the doctrine of the new religion the Covenant of the League of Nations. But this document, which for those who had imposed the war was merely a reinsurance policy to preserve the results of the war and of the peace, was cleverly disguised as a decalogue of international redemption.

The victors, as was their right, imposed a certain balance in their favour in the world, and then, by means of the League of Nations, set themselves to make that balance unchangeable, safe from attack. Thus the ambiguity consists in identifying this historical peace, disguised as a moral settlement of the world, with the new truth of President Wilson, handed down from the Sinai of the Hotel Crillon.

. What I have just said does not mean that we are adversaries of peace. That would be an absurdity. We believe in the necessity of peace, but one must begin by the States which have a common interest, — not a low material interest, but the defence of something which is the loftiest conquest of humanity. Certain of you here have seemed to doubt that it is such, but I refer to Western civilisation.

“I am not afraid of a war coming from Asia or Africa,” said Mr. Toynbee, “but I am afraid of a European war.” In speaking thus, he reproduced a belief which is widespread but false. It is a psychological error, persistent, but no less an error. We no longer occupy the position in the world which we held before the war. Until fifty years ago, the only great Powers of the world were in Europe and America, the white race was unquestionably dominant. Under those circumstances, it is natural that all wars should have been fought between Western Powers, for the stake of primacy in Western society, which meant the first place in the world.

To-day, dangerous forces, growing forces deny the legitimacy, deny the fact of this hegemony of the occident. I do not intend to be more specific, I shall merely say that those forces are represented by a few States which have acquired great strength and which have already begun the struggle against the occident on the economic front. Such States might be to-morrow the rallying points, the leaders of a revolution against the West.

Again, there is the new world of Islam, which has already risen against Europe as a religious movement, and which has acquired henceforth a clearly political character.

There are also other forces of eternal barbarism, in Europe and out of Europe, regarding which some of the great Western nations to-day display a strange blindness. But be sure that the Western peoples will end by becoming aware of the situation and of the danger they run. They will act then accordingly, and together. And the curtain will rise on the tragedy of history. It will no longer be strife between European Powers threatened with siege in their little continent, it will be the defence of the essential types of civilisation.



Then will come into play a feeling of solidarity superior to any international statute, created not by the decision of a congress nor by a decree, but by the consciousness of the need of safety

LORD LYTON British Co-ordinating Committee for International Studies

We have had a most interesting discussion, and I desire, in conclusion, just to express the impressions which I have carried away from it.

The first impression is the widespread belief in and support of this conception of collective security which has been represented by the various speeches that have been delivered in this room.

We have had, I think only two critics represented by our distinguished colleagues from Italy. But even they I think, were inspired more with the desire that our debates should not fall from too much unanimity than from real conviction, because they too have laid emphasis upon the necessity for solidarity. In his eloquent peroration, M. Coppola just now actually pointed out to us what was the progress in history of his own country how it had proceeded from small States always quarrelling with each other Florence at war with Venice, Naples with Milan and so forth, into a united Italy. That is the very thing we are seeking to bring about in the world.

But he wished for the present to confine our solidarity to what he called Western civilization, and he was obliged to invent a danger. The danger he invented was what he called an anti European revolution.

I have never seen it. The danger to Western civilization which I have seen, and which is present in all our minds, is the danger of an internecine war between the various members of that civilization.

But what is this Western civilization to which we certainly must rally and which he regarded as in danger?

The characteristics of Western civilization, which I have chiefly noticed, are the efficiency of its organization, and its reliance upon material force.

There are two alternatives before it. One is to spread those characteristics throughout the world, to impose that civilization upon the East. As Professor Coppola has himself reminded us the best example of that process is the evolution of modern Japan.

The other alternative is for this Western civilization to try and learn something from the civilization of the East and to combine for the benefit of the world spiritual ideals which are more particularly the product of Eastern civilization, with the efficient organization which is essentially the characteristic of the West.

I agree with my Italian colleagues in one respect. For this collective system to work it is necessary that it should include nothing but efficiently organized national Governments without that I think it cannot work perfectly. There are two Eastern States in the League



to-day in respect of which that qualification has not been realised. There is India, where there is an efficient Government which is not national, and China, where there is a National Government which is not entirely efficient. Our problem is to make the efficient Government of India more national, and the National Government of China more efficient.

It is for that reason that I venture to differ from my Italian colleagues and to welcome the fact that this collective system does include Eastern States as well as Western, and I believe that we each have something to learn from the other <sup>1</sup>

<sup>1</sup> See also above, "British opinion on Collective Security," p 79







## CHAPTER III

# PREVENTION OF WAR







## § 1. — PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES

### A. — MEMORANDA

#### AUSTRIA

(Konsularakademie, Vienna)

#### PLAN FOR THE ORGANIZATION OF PEACE OBSERVATIONS ON THE FRENCH PROPOSALS OF NOVEMBER 14TH, 1932<sup>1</sup>

by ALFRED VON VERDROSS (*translation*)

After demonstrating the present inadequacy of the international organs working for the prevention of war, M von Verdross continues as follows (*translation*)

The question that arises, therefore, is "What course should be taken for the settlement of conflicts of interest?" One way would be to follow the example of the Italo-Swiss agreements or other arbitration treaties which, after efforts at reconciliation have proved unavailing in the first instance, authorise the Court of Justice to take an *ex aequo et bono* decision. The generalisation of these decisions having a treaty as their basis does not seem desirable. First of all, in view of its history, its ideas and constitution, the International Court of Justice was set up for the purpose of applying positive *jus gentium* to a concrete case of dispute. If this Court is to function simultaneously and generally as a Court of Equity, it runs the risk of departing from its essential task and of confusing law with equity. Furthermore, a general authorisation to take a decision according to the principles of equity would destroy the notion of law as well as juridical security, for, in the absence of a sound basis, the decisions would be given over to arbitrariness. A general and unified ruling on the adjustment of conflicts of interest would also be premature. The time is not yet ripe for such action.

Approval should therefore be given to the *Memorandum of the French Delegation*, since, for the time being, it confines itself to suggesting the establishing of a more restrictive organization between the European States within the general structure established by the League of Nations and the Kellogg Pact, for it is precisely between these European States that the principal disputes subsist. But if we remember that the disputes between these States are due chiefly to the situation created

<sup>1</sup> Extract from an article published in the review "Völkerbund," of the "Deutsche Liga für Völkerbund," February 3rd, 1933



by the Peace Treaties it will be understood that most of these disputes could be settled by peaceful means, by the setting up of a Court of Revision whose duty it would be to modify the present state of affairs at the request of one of the disputants and in the sense of Wilson's Fourteen Points.

Al von Verdross concluded with the following statement:

The prohibition of recourse to violence in cases of self-defence as well as the reciprocal obligation to render aid in case of aggression will become really effective means only if steps are taken to strengthen the spirit of solidarity and the sentiment of a common destiny among the European States. Such a spirit and such a sentiment cannot live and overcome the interests of individual States unless each member of the community of Christian States of the West submit to some form of equitable organization. The existence of such an organization implies the existence of a Court of Revision: it will therefore be realised that any other measures that might be taken for the organization of European peace must ultimately depend on the institution of this Court.

## LEGAL DIFFERENCES AND CONFLICTS OF INTERESTS

by STEPHAN VEROSTA (*translation*)

A legal difference exists

- (a) if the parties agree to settle the difference by legal means and if they contest one another's right and if further
- (b) the legal difference can really be settled by the application of legal rules on the basis of the sources of international law as they are enumerated e.g. in Article 38 of the Statute of the Permanent Court of International Justice. It is the task of the tribunal itself to define the question at issue.

The definition which corresponds most closely to our conception of the legal difference is that contained in the Treaty of Arbitration and Conciliation between the United States and Austria of August 16, 1928 (published in the Austrian Official Journal *Rechtsgesetzblatt* 119 ex 1929) the first article of which provides:

"All differences relating to international matters in which the High Contracting Parties are concerned by virtue of a treaty, of a law made by one of the States or by a treaty or otherwise which it has not been possible to settle by peaceful means, shall have international character and shall therefore be subject to a special commission of conciliation and which are put to rest by the means of law, the jurisdiction of the Commission of Conciliation of the parties to the dispute shall be determined by the Permanent Court of Arbitration, Article 11 and Article 12 of the Convention of October 18, 1928, between the Contracting States, the text of which is attached to the present Convention, which special agreement shall be concluded by the Contracting States, which may be necessary to the settlement of the dispute, shall be concluded by the Contracting States."



[illegible]

1. 凡在本行开立存款账户的存款人，均可向本行申请开立支票。
 2. 支票的出票人必须是在本行开立存款账户的存款人。
 3. 支票的金额必须与存款账户的余额相符。
 4. 支票的有效期为自签发之日起十个工作日。
 5. 支票的收款人必须为本行开户的存款人。
 6. 支票的用途必须符合国家法律法规的规定。
 7. 支票的签发必须使用本行提供的支票簿。
 8. 支票的签发必须加盖本行的预留印鉴。
 9. 支票的签发必须填写完整、清晰。
 10. 支票的签发必须遵守本行的支票管理规定。

[illegible]

Whereas, in the case of the *status quo* above, it is the *right* & *element* of the difference of the *top* differences which are absent, in the difference, which is proposed to deprive a "*status quo*" difference, it is the *right* & *element* which are absent. The parties do not contest reciprocally a claim of right. In place of the *status quo*, the dominant State desires an evolution, a change in the law, in place of a static situation a dynamic one, in place of positive law it desires an equitable solution.

But in this case, the tribunal can find a just solution only *ex aequo et bono*, on the basis of a special authorisation by the parties. If it lays down a legal decision based solely on positive law, it will disappoint the plaintiff and will not completely settle the international conflict (which is the case, *ex p.*, in the General Act of Geneva).

This viewpoint, among other, serves to explain the desire for the establishment of a "Court of Equity" and that of a "European Court of Revision" (See the memorandum of Professor Verdross)<sup>1</sup> These desires are justified by the slowness of the process of creation of international law, which, in spite of Article 19, prevents a positive change, even in cases involving the maintenance of peace

Indeed, the real contrast is not between *legal differences* and conflicts of interest, but between legal differences and *equitable differences*

<sup>1</sup> Above, p. 189



## CANADA

(Canadian Institute of International Affairs)

## COLLECTIVE SECURITY

(Rapporteur ALAN B. PLAUNT)

*Treaty Revision*

Obviously, effective machinery for the peaceful alteration of the *status quo* is essential to the organization of permanent peace. If war is not to break out, Article 19 of the Covenant must be made practically effective so that legitimate demands for revision of the *status quo* may be granted. Otherwise the law (based on legal rights) which members of the League may be called upon to enforce by means of sanctions may be terribly unjust and nations which agree to co-operate in the application of sanctions may be compelled to act as the policemen of injustice.

It is to a very great extent the fear of this which has made the British States in the League fight shy of committing themselves to take part automatically in applying sanctions against a country which may be only technically the aggressor. Some of the anti-revisionist Powers on the other hand, have been prepared to go the whole way in the organization of an international army to enforce the Covenant but their standing veto has prevented the breath of life coming into Article 19. This deadlock can only be broken by a simultaneous advance along the three fronts of sanctions, treaty revision and the elimination of the economic causes of disputes.

The following procedure is suggested as a possible method for the application of Article 19. The Government desiring a change would bring the matter before the Assembly under Article 19. The Assembly having first satisfied itself that a *prima facie* case had been made out would appoint by a majority vote a Commission of Inquiry with the widest possible terms of reference. The Commission's report would be discussed by the Assembly and perhaps after one or two adjournments in order to allow time for public opinion throughout the world to make up its mind where justice lay the Assembly would be in a position to publish recommendations made by a two-thirds majority of the Assembly including all the *Great Powers* Members of the Council but not including the disputants.

There is a difference of opinion as to whether these recommendations should be enforceable after a certain length of time by the action of the League. On the one hand, it is argued that recommendations on matters of importance will be disregarded unless they are backed by force. On the other hand, it is argued that the appeal of justice has not been necessary to give validity or effect to the decisions of the



Permanent Court of International Justice and the world society is still less ready for such action in non-justiciable disputes.

A possible compromise is that advocated by Lord Robert Cecil at the Peace Conference, when he proposed that Article 10 of the Covenant should contain the following

" If at any time it should appear that the boundaries of any State guaranteed by (this Article) do not conform to the requirements of the situation, the League shall take the matter under consideration and may recommend to the parties affected any modifications which it may think necessary. If such recommendation is rejected by the parties affected, the States members of the League shall, so far as the territory in question is concerned, cease to be under the obligation to protect the territory in question from forcible aggression by other States, imposed upon them by the above provision " <sup>1</sup>

### (I) *Elimination of the Economic causes of war*

An extremely important aspect of collective organization is the economic aspect. Much of the friction leading to war is basic and, in the long run, economic, and the removal of the economic causes of war is essential if a system of collective security is to be established.

Among the main economic causes of friction between nations are such matters as labour standards, currency fluctuation, tariffs, distribution of raw materials, dumping, shipping subsidies. These are all matters which are still entirely within the domestic jurisdiction of States and are not subject to international law unless covered by special treaty arrangement. It is felt that these matters must, to an increasing extent, be brought under international jurisdiction.

It is undoubtedly true that this would involve a derogation of sovereignty, but then the choice has to be made between sovereignty and security. While much opposition to international control will be encountered from special interests who profit from the *status quo*, it is felt that this will in due course be overcome by the pressure of public opinion. In Canada, for instance, there is growing support for the idea that some part of the national sovereignty should be bartered in exchange for an international arrangement which would lower and stabilise tariffs and currency and so create an improved atmosphere of security. The same might be expected of other nations.

### (II) *Labour Standards*

The introduction and enforcement of minimum labour standards is one of the first essentials of the establishment of the world community since, as the Treaty of Versailles recognised, universal peace cannot be established unless social justice has been attained, for there exist to-day as there did when Part XIII of the Treaty was drawn up establishing the International Labour Organization "conditions of labour involving such injustice, hardship and privation to large numbers of

<sup>1</sup> Wild *Sanctions and Treaty Enforcement* p. 27 Harvard University Press 1934.



people as to produce unrest so great that the peace and harmony of the world are imperilled."

### (iii) *Mandates and Colonies*

The Versailles Conference put into operation the mandates system under which the principle of the "Open Door" was applied to all mandated territories. This principle can only be effective in removing one of the main causes of war if it is applied not only to mandates but to all colonial possessions which are not likely to become self governing in the near future. If this proposal were adopted, Canada would lose the preferential advantage in British colonies granted to her at the Ottawa Conference, but on the other hand it is argued that the German, Italian and Japanese demands for colonies or spheres of influence would greatly diminish in intensity especially if all colonies and mandates which are not likely to become self governing were made mandates of the League and administered direct by the League and not through mandatory Powers.

### (iv) *Raw Materials*

The adoption of such a proposal would render it less likely that the clash of rival economic imperialisms in search of raw materials would result in war. But something more is required. There must be some sort of international control over the distribution of raw materials produced both from colonial and other sources.

Needless to say such a proposal would meet with little favour in official circles in Canada. Canada has, in fact, fought all attempts at Geneva to investigate the problem. Nevertheless, many Canadian experts feel that the control of raw materials is an essential part of any attempt to eliminate the economic causes of war.

### (v) *Machinery of International Control*

The question of machinery of control is, of course, all important. The sort of machinery advocated by B. B. Wallace and L. R. Edminister in their study "International Control of Raw Materials"<sup>1</sup> might be applied to a number of the items mentioned above. Thus, for example, the League of Nations would call an international conference on the problem of access to raw materials which would formulate a code of fair and reasonable practices in this matter and which would establish international machinery for interpreting the principles agreed upon. The convention would create the law and an international judicial authority would interpret that law. Considerable discussion has taken place recently on the question of what body would be most competent for the purpose of interpreting the law. It is widely suggested that a

<sup>1</sup> Published by the Brookings Institute in 1930.



commercial division of the Permanent Court of International Justice would be the best body

### (1) *Subjects for International Control*

A scheme of international control might, to begin with, be applied only to a very limited number of particularly essential raw materials. One such list which has been drawn up consists of eleven products: iron-ore, rubber, manganese, nickel, aluminium, newsprint-pulp, copper, oils, tungsten, chromium and mercury.

The application of the principle of international control should obviously not be restricted to the sphere of the production and distribution of raw materials. It would have to be applied to such subjects as tariffs, currency, and international investment, since at present, because of the lack of international control, nations have the legal right to take steps which may ruin the economy of other States.

It would obviously be impossible and unnecessary suddenly to establish international controls over all these matters. What might be done immediately, however, as Professor Harold Laski has suggested, is "to put all international loans under the control of the League, to agree, through its machinery, upon a unified policy for the central banks of the world, to reduce tariffs, and to stabilise them for a definite period at the reduced level, and to introduce minimum labour standards in order to end the dumping of goods produced by sweated labour."<sup>1</sup>

## FRANCE

(Commission Française  
de coordination des Hautes Etudes Internationales)

### THE REVISION OF TREATIES

by LOUIS LE FUR AND DE GEOUFFRE DE LA PRADELLE (*translation*)

The question of the revision of treaties has already been studied in the very useful Memorandum which M. G. Bayón y Chacón contributed to the International Studies Conference.<sup>2</sup> It will therefore suffice, in this review of the subject, to dwell particularly on certain difficult points. The solutions proposed in the present report agree in the main with those presented by our Spanish colleague. It is worth while to underline this agreement and to point out that, in regard to one of the most delicate questions of present-day international law, impartial students, whether they belong to nations which took part in the great conflict of 1914-1918 or to those which kept out of it, arrive, by studying this question scientifically, at practically similar

<sup>1</sup> *Intelligent Man's Way to Prevent War*, page 539

<sup>2</sup> See above, p. 241



results. In order to avoid all possibility of confusion, after having clearly formulated the question, we shall have to make a careful distinction between the point of view of existing law and that of the reforms which may appear desirable or necessary with a view to improving the present situation.

It is the almost unanimous opinion of jurists who are specialists in international law that the rule *pacta sunt servanda* is one of the essential principles of that law: some of them, indeed, mistakenly regard it as the sole fundamental rule of international law. This view contains a twofold exaggeration. The binding force of a contract or of a treaty cannot arise from the fact that its conclusion gives birth to the hope that it will be executed and that each of the parties has a *right* not to be disappointed in its expectation. This would involve begging the question if there were no moral and legal obligation existing before the contract: it is this pre-existing obligation which makes the expectation legitimate and not the expectation which gives a binding character to the undertaking.<sup>1</sup> Moreover, the undertaking is licit only on condition that it conforms to what some call the international public order and others the general principles of law. But, subject to these reservations, there is no doubt that the respect of engagements appears as a direct application of the principle of justice and of the idea of good faith. Social life would be impossible, between States as well as between individuals, if it did not rest upon that minimum degree of reciprocal confidence which gives the parties a right to count on what has been agreed to.

The principle of the respect due to treaties must then be firmly declared: we must vigorously reject the idea voiced by many German philosophers and jurists, beginning with Hegel, that treaties possess only a conditional validity: the condition being in this case that they continue to serve the interests of the State which signed them. Such a theory is destructive of good faith, which is the basis of social order and the necessary foundation of human relations. But just as the principle of the legal validity of treaties appears incontestable: it is equally certain that a treaty cannot be eternal, any more than a contract, a law or a constitution. The contract is law for the parties: but there is no *lex in perpetuum valitura*. A law even though it be excellent at the moment of its enactment, may become inapplicable after a certain number of years or of centuries: it may have consequences which are disastrous for those whom it concerns. It is just because law is a rule of life that it cannot oppose life: that it must evolve with life in order to be able to continue to adapt itself to life. Law is not the indefinite prolongation of a particular right of enjoyment: the maintenance of the *status quo* after profound changes have taken place in

<sup>1</sup> Cf. P. Chauley, *La nature juridique des traités internationaux à la lumière du droit contemporain* (Paris, 1932), pp. 86ff.



the state of society In the course of the centuries, new legal principles may appear the abolition of slavery, the idea that work should not be regarded as merchandise, as between States, the acceptance or the rejection of the right of intervention, of the principle of nationalities, of the right of self-determination of peoples, the recognition of certain rights of minorities, the prohibition of the practice of taking the law into one's own hands except in self-defence

Thus it is necessary — and it is this that makes the problem so difficult — to hold on to both ends of the chain, in spite of the distance that separates them, it is necessary to affirm the legal validity of treaties and at the same time the fact that, like all that is human, they cannot be eternal

Let us then assume that a given treaty was originally valid and freely concluded Since the time when it was concluded, there has come about, by hypothesis, a change in circumstances such that this treaty leads to consequences which were certainly not intended and which one or more of the contracting parties would never have accepted Under these conditions, especially if the treaty in question contains no limit of duration and is perhaps very old, not only is it true that good faith does not oppose a partial or total revision, on the contrary, it requires such a revision The theory of unforeseen circumstances is recognised nowadays even in domestic law, within certain limits, especially in public law What decision, then, should be reached in this case between States ?

There is one solution which seems clearly indicated namely, to decide that whenever the question is a legal one, according to the terms of Article 13 of the Covenant, at least for the States which have signed the optional clause of the Permanent Court of International Justice (Art 36), this question must be subjected to an arbitral or judicial decision, which shall pass objectively on the validity of the disputed treaty

Unfortunately, it is difficult to set up a clearcut distinction between legal questions and political questions What is more, it may happen that, although the application to have a treaty declared void has been rejected by the Court, it is nevertheless urgent from a political point of view to revise the treaty, in order to avoid a threatened war It is therefore preferable to decide that, aside from cases in which the States involved agree to consider the question as purely legal and to submit it as such to arbitration or to the jurisdiction of the Permanent Court, the dispute must be laid before another body, and this can only be the Assembly of the League of Nations The Assembly alone will have enough prestige, especially after having intervened successfully in a few instances, to hand down decisions in questions as delicate as the consideration of clauses which have become inapplicable or of situations which have become dangerous Its jurisdiction is broad



enough to permit this, if it resolves to make use of all its powers and it could always solicit the opinion of the Permanent Court on points of law. A recent twofold experience showed that the Assembly was capable of making successful headway against the current of general discouragement which had set in.

The great misfortune of the post war institutions has been that we have been timid about trying to make them accomplish all that they are capable of doing.

It is more and more necessary that we realise that the League of Nations constitutes henceforth a legally organised community. But not only is it true that there can be no society without law in a normally constituted society the judge does not suffice for the task of declaring the law. It is the judge's function to apply the law to interpret it in case of conflict but the making of the law is not within his competence. He may indeed, as under certain modern legislations interpret an obscure text he may even, as in Switzerland, complete the law when it is silent on a given point, thus playing the part of legislator in the particular case which is submitted to him. But if he may in the name of equity make a decision *propter legem* he cannot do so *contra legem*. A legally organized community needs a lawmaker to frame the laws necessary for the maintenance of the social order and to determine also the sanctions necessary to ensure their execution. This lawmaker in international law can only be the Assembly of the League of Nations, and not the Permanent Court nor any court of arbitration.

But in this connection, the Covenant of the League of Nations seems to require completion if it is desired that the Assembly be enabled to assume this rôle effectively. The Assembly or another organ created for the purpose, — though it hardly appears that any other organ would possess greater authority — must be able to decide in cases of this sort without being bound by the existing law since it is precisely the existing law which, by hypothesis creates the situation which endangers the peace of the world. The Assembly must then, be able to decide like the legislator in matters of domestic law on the sole basis of the present situation of considerations of justice and of economic necessities.

But the Assembly cannot perform effectively this difficult task so long as it is paralysed by the rule requiring unanimity even if this be reduced to quasi unanimity in so far as concerns Article 19 which could not otherwise possibly be applied. As long as the will of a single member perhaps the smallest of all, suffices to thwart the will of all the others as the Republic of Cuba was able to prevent single handed the modifications in the Statute of the Permanent Court which all the other members desired, the League of Nations will not have a legal organization such as is needed to permit it to accomplish its difficult task. History tells us that a State once existed which, in the name of liberty granted a right of this sort not indeed to all its people



but to the lords, who were thus treated as sovereigns. The *liberum veto* brought about the ruin and the partition of this State, which had been the most powerful in Eastern Europe. No society, whether made up of individuals or of States, can live in a state of anarchy. In Aristotle's day as in our own, and as long as there shall be human societies, their regular functioning requires a proper balance between the liberty necessary to beings endowed with intelligence and the authority indispensable to every numerous society.

Of course the abrogation of the rule requiring unanimity, which is based on the false principle of the absolute sovereignty of each member State, does not imply voting by simple majority. There is no reason for not adopting, or rather everything points to the necessity of adopting in this case, the principle of the augmented majority, requiring, for example, two-thirds or three-fourths of the votes. To do so would be to follow the practice of many States in their domestic legislation in connection with certain important points, such as the revision of the Constitution, or, in the United States, the ratification of treaties by the Senate. It is no less evident that there can be no question, if the international society is to be given a viable organization, of allowing all the States an equal voice, it is as unjust as it is impolitic to give the same weight in the deliberations and decisions of an international assembly, on the one hand to States as yet but little developed, such as Liberia, or to very small States like the Central American republics — nor to mention those refused admission to the League of Nations on this ground, like Andorra, San Marino or Lichtenstein —, and on the other hand to very populous States or to those whose sovereignty extends over an immense territory, like Great Britain, the United States, Russia and France. The absolute equality of States is one of those *a priori* ideologies which are as false as absolute sovereignty. What a legal regime requires, between States as between individuals, is legal equality, not equality of rights. For if absolute equality were necessary, why should it not exist as well for social burdens as for rights? It is only too easy, for a State which knows it will not have to participate in the effort, to declare that international forces must be sent to the Far East or to South America to ensure the triumph of law or the maintenance of peace. If the equality of burdens appears impossible and even ridiculous, it must be admitted that justice and logic require the granting of special rights to those who are called upon to assume particularly heavy burdens.

In the future organization of international society, we must not commit the error of the democracies based on absolute equality, an error which is so largely responsible for the present crisis of democracy. A properly-drawn international constitution must give due weight to the population of the respective States, to the extent of their territory, to the interests which they are called upon to pursue in international affairs, and to the obligations which devolve upon them for the func-



tioning of the international community. How are the votes to be distributed? The problem is indeed difficult, in international law as in domestic law but it is one of those problems which must be faced, and to which the needs of life are bound sooner or later to provide a solution. Many formulas are possible, and the solution may be sought in quite divergent directions. When the Covenant was being drawn up Switzerland proposed a plan which seems very reasonable: decisions of the Assembly to be binding must be voted by a three-fourths majority and in addition, the States making up this majority must represent three-fourths of the total population of the States belonging to the League. In this way the State would not overwhelm the individual, nor the individual the State. It would be impossible for a coalition of small States to impose its will on the large States while, on the other hand, States like China and India could not alone form a majority although they represent almost half the population of the globe.

M. Bayón y Chacón,<sup>1</sup> with the same end in view proposes a system similar to that which the Second German Empire adopted for the Federal Council (Bundesrat).

Each of the twenty-five member States had a number of votes corresponding to its size, varying from seventeen for Prussia (out of a total of fifty-one) to a single vote for each of the seventeen small States or Free Cities (Art. 6 of the Constitution of April 16 1871) while Article 78 of the Constitution provided that proposed amendments to the Constitution are considered as rejected when fourteen votes are cast against them in the Federal Council. " Thus the largest of the German States, Prussia, could prevent single-handed a revision of the Constitution but four or five of the States of secondary importance (which had seventeen votes among them), or a large number of small States or Free Cities acting in concert could achieve the same result and thus prevent any modification tending to increase the influence of the large States. The problem is not insoluble it will be easy to find an adequate solution when one is sought with a determination to succeed. But if anything practical is to be done, the League of Nations must be delivered from the anarchic yoke of the *liberum veto*. I call it an anarchic yoke, for the abuses of excessive liberty may create a situation which is intolerable for those who suffer from it.

Once the principle of an augmented majority is accepted, not merely in exceptional cases as at present but generally it will be possible to carry out an adequate revision of Article 19. The advice " of which it speaks and whose consequences are far from clear must be replaced by the opening of a debate terminated by a decision which will be binding when the required majority has been obtained. It is true that the Assembly has declared itself incompetent to make a decision of this

<sup>1</sup> His report was reproduced in the *Revue de Droit International* for 1934 N. 3 p. 44.



order, and it is quite right in taking that attitude, in the present state of things, its attitude has been correct from a legal standpoint and politically prudent. But it is none the less true that for the regular functioning of a permanent international society, some such change as we have suggested is absolutely necessary.

Not only is it indispensable that the Assembly should possess this right, but it is no less indispensable that it should be able, in case of need, to enforce the execution of its decisions by means of effective sanctions. It would be quite useless to give it the right to make decisions if these were not to be carried out. For the present, we are still confronted, on this point, by the gap in international law which has been so often pointed out. But it seems that people are at last beginning to realise that any international organization which does not try to see to the execution of its decisions is doomed to remain ineffectual. We must not, therefore, despair. The recent example of the maintenance of order in the Saar by the presence of international forces, hastily summoned at the last minute, is a guaranty of the results that could be obtained with a less improvised organization.

But it will perhaps be said that such modifications of the Covenant as those here suggested would mean the creation of that famous super-State which has so often been declared undesirable. The terms employed are here of little importance, the essential thing is not to allow ourselves to be duped by them nor to fall victims to self-created illusions. The real question is whether the League of Nations can survive or not, whether or not it is necessary to abandon an institution which has already saved humanity from more than one war and which may hereafter save millions of lives. If by super-State is meant a World-State exercising over the whole human race an absolute sovereignty like that of the old sovereign State, then the League of Nations is certainly not and — fortunately — never will be a super-State. But if by super-State is meant an organization possessing authority to make, on certain specific points, decisions which are binding on its members, then it is surely necessary that the League of Nations should be a super-State, it may even be said that it is one already, by virtue of certain articles of the Covenant.

## LEGAL AND POLITICAL ASPECTS IN THE ORGANIZATION OF INTERNATIONAL JUSTICE

*by* GERMAIN WATRIN

Until recently, it was considered that there were two kinds of conflicts — legal and political, no great stress was laid, however, on the scientific validity of this classification.

Political conflicts were dealt with by diplomatic methods — good offices, mediation, conciliation.



For legal conflicts, judicial methods were employed namely arbitration or recourse to international justice. The opinion even grew up that legal conflicts between States were of the same nature as conflicts under private law and jurists advocated the establishment of a system of international justice which should be as judicial in its character as justice within the State. Did not Mr. Root say at the Second Hague Conference "It is often the case that a State which would be disposed to submit its claim to an impartial judicial decision is not disposed to submit it to this sort of diplomatic procedure. If there existed a Tribunal handing down decisions in conflicts between States with as much impartiality and objectivity as the United States Supreme Court displays in the lawsuits which take place between citizens of the different States of the Union there is no doubt that the States would be much more ready to submit their difficulties to the decision of that Tribunal than they now are to resort to the hazards of arbitration."

It seems indeed, that the desire to model international justice on domestic justice was a guiding principle with the creators of the Permanent Court of International Justice, both from the standpoint of organization and from that of function. But this attitude is based on an idea which is not entirely correct.

There is not, in reality a sharp distinction between legal conflicts and political conflicts. All conflicts are at the same time political and legal. This fact had not escaped the attention of writers nor of diplomats.

Westlake, speaking of questions which require the application of rules of law says that they are *rather* legal than political. On the other hand, he says, there occur sometimes political differences which States may wish to settle by arbitration. "Such a question is *rather* a question of national policy than of scientific international law."

M. Ruy Barbosa, at the Second Hague Conference, noting that the reservation of vital interests can be invoked in legal conflicts quite as well as in political conflicts, held that this distinction was without validity (Proceedings, Speech of M. Ruy Barbosa at the Second Hague Conference, p. 109.)

A thorough examination of the matter shows that the distinction between legal conflicts and political conflicts has no legal basis. There has never been a conflict submitted for judgment to an arbitration tribunal which did not turn out to have a political character in some aspect or other there is at least the matter of the prestige of the State which loses. On the other hand there is no political question which does not have a legal side to it. The particular importance of the conflict may obscure but can never eliminate the legal question, which always comes down to this: "was the action of such and such a State from which has arisen the conflict in harmony with the rules of international law?" There is then, only one category of conflicts the



various elements of which, legal and political, are closely intertwined. However, the political or legal character may play its part, not in deciding whether the difference is justiciable, but in how it is to be judged.

### *Extension of the Powers of the Arbitrator*

The powers of the arbitrator can be extended in two different ways. He may be given functions which are properly speaking legislative, or the sources of law which can be used in preparing his decision may simply be given a broader definition.

*The legislative power of the judge*—in the case of the Brazilian and Serbian loans, and again in the case of the North Atlantic fisheries, the judge was commissioned to draw up rules after the judicial organ had handed down its decision on the basis of existing law.

In the difference relative to the seal fisheries of the Behring Sea, the same organ was called upon to perform two missions concurrently.

The Tribunal of Paris was to state what were the respective rights of the United States and of Great Britain relative to the fisheries under the terms of the treaties. After having established the fact that no rule of positive law limited the liberty of the parties, the Tribunal, with the express consent of the parties, repaired this omission in positive law by incorporating in its sentence a body of rules regarding the fisheries (See *Revue de Droit international*, 1931, v II, p 257. Analysis and References).

The power to create law has a political character. It is not, in principle, a function of the judge. It may seem opportune to accord him this function, either in a particular case as in the affairs just mentioned, or in general, as is done by the German-Swiss Convention of December 3, 1921. This convention gives the arbitrator, when the law is silent regarding the given case, the right to decide "according to the principles which, in his opinion, ought to constitute the rule in international law." *It seems difficult to urge the general adoption of such a clause, in which, in reality, is latent the problem of the international legislator and of the revision of treaties.*

### *Extension of the Sources of Law*

Is it possible to confer on the arbitrator in one and the same instance the power to decide not only according to law but also *ex aequo et bono*, without it being necessary to obtain on this point the special consent of the parties? Here again it is necessary to make a distinction.

If the proposal means giving the arbitrator the right to take into consideration *political expediency*, it must not be forgotten that such a clause will tend to assimilate the arbitrator to the diplomat, or in other words will bring us back to the traditional pre-war type of arbitration. Bearing in mind the remarks of Mr. Root at the Hague Conference in 1907, we cannot but hesitate to give the arbitrator such a power.



If on the other hand, the proposal is that the arbiter be allowed to decide on the basis of what is just, it should be stated that this power is not incompatible with his judicial functions for in exercising it he does not perform a political act, but an act of equity.

Equity is merely the application to a particular case of the higher principles of that justice of which the Romans have left us an enduring definition: *Justitia est constant et perpetua voluntas jus suum cuique tribuere*."

Since equity is an adaptation of Justice to a given case in consideration of the circumstances the idea of political expediency has no longer any part in the settlement of conflicts for there can be no equitable settlement which is not at the same time expedient. It is worthy of remark that the German-Swiss arbitration convention, which gives the judge such broad powers, allows him, with the consent of the parties, to decide in accordance with considerations of equity without speaking of expediency.

It seems desirable to recommend the formula proposed to the Committee of Jurists by M. de la Pradelle and Baron Descamps. The former proposed the substitution for Article 38 of the Statute of the Court of the words "The Court shall decide according to Law, Justice and Equity." Baron Descamps proposed the formula "The rule of objective Justice," — not a subjective conception of Justice, which would have led to the failure of the Court, but an objective conception revealed by the consensus of jurists and by the legal conscience of the civilised peoples."

It does not seem that in performing this task of equity the judge encroaches on the legislative function. Did not M. Loder say during the deliberations of the Commission of Jurists, that it was the duty of the Court to bring to maturity universally recognised customs and principles (Minutes, p. 294)? In so doing added M. Hagerup the judge does not create a rule of law he merely calls attention to a latent "rule" (Minutes, p. 307).

The working out of a procedure adapted to the mixed character of international conflicts may then be summed up as follows:

The arbiter may be given the right to decide according to Law and Justice. This function of equity is not in contradiction with the arbiter's purely judicial character.

On the other hand, the arbiter may be given the power to decide on the basis of expediency as well as of equity. This solution however seems to us less happy. It is not in harmony with the modern tendencies of international justice.

To what organ shall this enlarged function be entrusted?

(1) In line with the second conception, there is a tendency rather to confer upon an arbiter the arbitral function in the technical sense (as opposed to the judicial function). This is in accord with the old tradition in arbitration.



(2) If, on the contrary, the judicial tendency be followed, the Permanent Court of International Justice, which is certainly the most perfected international jurisdiction from the standpoint of legal technique, seems clearly designated to receive the task of passing judgments on the basis of equity

There is no reason, even, why the Hague Court of Justice should not be charged with a genuinely arbitral function. It should not be forgotten that the Permanent Court of International Justice was created not only as a Court of Justice, but also as a Court of Arbitration. The preliminary discussions are evidence of this fact (See Documents presented to the Commission of Jurists. Appendix. Notice on the Characteristics of the new Court, p. 112). When the various documents and drafts relative to the Constitution of the Court were presented to the Commission of Jurists of The Hague, the question was raised "what is the intention of the Covenant of the League of Nations relative to the legal nature of this Court?", — was it to be Court of Justice, Court of Arbitration, or a combination of the two functions, arbitral and judicial? It is to be noted that the two original drafts, British and American, looked to the organization of arbitration. It is only in the draft of January 20, 1919, that the expression occurs "decision of an international Court of Justice." An amendment of Lord Robert Cecil and another presented by France in February, 1919, proposed arbitral functions for the Permanent Court of International Justice. These proposals were accepted.

Thus we must reject as contrary to the intention of the authors of the Statute the opinion expressed by Mr. Kellogg in a minority opinion in the case of the Free Zones (AB 39, pp. 32ff), he says that the Court "even with the consent of the parties," would not have been able to hand down a decision on the question raised by the Franco-Swiss compromise, because that question was not of a legal nature. The Court, he says, is a Court of Justice, not a Court of Arbitration. This is not legally accurate.<sup>1</sup>

<sup>1</sup> As a matter of fact, however, the Court is so obsessed by its judicial function that it denatures its other functions to make them conform to this judicial character. The advisory opinion has become equivalent to an award. Arbitration — though it is distinct from international justice — was certain to model itself on judicial settlement. This was foreseen even before the Court was created. "It would weaken the judicial character of a tribunal of this type to call upon it to settle, as a tribunal, a political conflict," we read in the notice quoted above on the character of the new Court (p. 112). And, in fact, in the two ordinances and the judgment handed down in the case of the Free Zones, the Court indicated its reluctance to overstep the rules of its Statute (AB 35, p. 12, AB, p. 11 AB, 46, p. 70). It is in the judgment that it manifested its hesitation in the most characteristic fashion. The parties had called upon the Court to regulate questions relative to customs. The Court declared "The regulation of these questions is not a question of law but a question depending on the interplay of economic interests, for which a government would not be willing to accept the control of an outside body the mission entrusted to the Court is ill-adapted to the rôle of a Court of Justice. This mission is one which the Court would have hesitated to accept, even if the second paragraph of Article 2 had not been inserted in the compromise."



(3) The greatest liberty should in any case be left to the States, provided a satisfactory result is obtained. There is, consequently no reason why a tribunal should not be formed half of members of the Permanent Court of Arbitration and half of members of the Permanent Court of International Justice, so as to represent the arbitral tendency and the judicial tendency if such a combination appears satisfactory. Such an opinion seems authorised by the elasticity of the general arbitration convention, which rejects no solution capable of furthering the growth of arbitration.

### *Conclusions*

(1) The political character which is to some extent inherent in every international difference never renders arbitration impossible.

(2) The distinction between legal differences and political differences is important only in determining how the difference is to be judged. judicial procedure should be followed for legal differences (unless the States prefer arbitration) arbitral procedure for political differences (unless the States consent to judicial settlement).

(3) In the present state of the Law the arbiter who generally has broader powers than the judge can nevertheless make a decision *ex aequo et bono* only in case there is no law governing the point in question, and not when the law is inadequate. There is here a lacuna which does not always make it possible to ensure peace by Law.

(4) If the judge received the power to decide on the basis of law and justice, the distinction between legal and political conflicts would become entirely meaningless and peace would be assured in all cases.

If the formula "Peace by Law" turns out sometimes to be inadequate, it is impossible to doubt the value of this other formula "Peace by Justice."

## GREAT BRITAIN

(British Co-ordinating Committee for International Studies)

### THE ELEMENTS OF COLLECTIVE SECURITY

by C. A. W. MANNING

A word may now be said of the principle of respect for treaties. As a fundamental norm of international law this principle will surely not be called in question by anyone. Even in a debate on international ethics it might be affirmed with a certain measure of emphasis. Constructive statesmanship however must attend not only to how matters stand in the worlds of law and ethics but also to how things are liable to happen in the world of fact. Scientific students will properly take note that men and governments while often they do what is right



also occasionally do what is generally judged to be wrong. Hence the problem — or a great part of it — of collective security. To declare that our plans should conform to the principle of respect for treaties is rather like saying that a well-conceived national constitution should start off with the proposition that violent revolution is unlawful, unconstitutional, unrighteous, and wrong. The lawyer may be content to inquire, what kind of conduct does the constitution authorise? The statesman will sometimes have to ask himself, How much strain will the constitution bear? Dissatisfied elements will hardly be appeased by the citing of legal texts. Desperate men will only be further exasperated by assurances that constitutionally they have no case. *Mutatis mutandis* it may be the same in international affairs. It is possible that a too rigid insistence on the sanctity of treaties is one of the roots of the insecurity in the world to-day. Any realist knows that if treaties are not always respected this sometimes is partly because they have stopped being respectable.

To improve security not merely must we seek means to promote a greater respect for treaties, but we must see to it that treaties are not relied on beyond the limit of what is reasonable. Better at any rate to seek ways of averting the disregard of treaties than, superfluously, to proclaim our assent to the proposition that, legally and morally, treaties ought to be acknowledged as sacred.

The problem, however, with which "revisionism" confronts us has rather different aspects according as we approach it in the interests of justice, or merely in those of peace and security. From this latter standpoint "revisionist" situations become interesting only when actually, or at least potentially, dangerous. From an objective point of view it is probably a mistake to suppose that every legitimate grievance must be redressed if stable peace is to result. This assumes too readily that continuing injustice is necessarily fatal to peace. Though sentimentalists are wont to make some such assumption it is probably as ill-founded as it would be in reference to social situations at home. For unredressed grievances to imperil social stability they must be not merely deep, or even legitimate — more depends on the strategic position and numerical importance of the persons aggrieved. So too a small country may have indefinitely to put up with conditions for which there is no moral justification whatever.

In the interests, then, of peace, though not of course of righteousness, attention may be fixed on the grievances of those States which, because of the present or potential strength of themselves or their friends, are so situated as to be possessed of "nuisance-value." By the same token it is not necessary that grievances be particularly well-founded, if only they be keenly enough felt.

Again, in the treatment of such cases, abstract justice may be an imperfect guide to the change that will exorcise the danger of war.



Where the "lion" — and there are other lions besides the British specimen — has been used to obtaining the "lion's share" of such good things as might be going the interests of peace as distinct from justice, may require that the lion, when deigning to lie down with the lamb be not expected to live on the lamb's diet. If our aim is to create the conditions of security and of justice both at once, our problem becomes more difficult, more impossible perhaps, to solve. At all events the subject for our Conference is "security" with no qualification beyond that of being "collective." If our reflections should lead us to conclude that sometimes peace can be safeguarded only so to say at the expense of justice, it behoves us candidly to record our finding, leaving it to the statesmen and the peoples to say whether the maintenance of peace is in all contexts an absolutely desirable object of diplomatic solicitude.

### THE COLLECTIVE PEACE SYSTEM AND BRITISH POLICY<sup>1</sup>

by W. ARNOLD-FORSTER

British public opinion is likely to continue to attach primary importance to the point that any sound system of collective security must be positive and constructive if its negative and repressive provisions are to function properly. It will only be possible to secure adequate British support for the sanctions of the Covenant if it is emphasised that they are meant only as a backing, not as a substitute for constructive organization of peace and active work to remove causes of war. In every country it is necessary for supporters of the collective system to persuade public opinion that recourse to force must be wholly ruled out as a means of change, and in every country there is need of fuller recognition of the necessity of international sanctions as an element in the peace system. But those who desire a mere unequivocal British acceptance of Articles 10 and 16 will make their appeal much more acceptable to British opinion if they do not ignore the connection between Article 10 and Article 19.<sup>2</sup>

<sup>1</sup> See also pp. 91, 303, 353.

A just recognition of this point was shewn in a broadcast by M. Tardieu to the United States at the beginning of the Disarmament Conference. It is said that in submitting the (French disarmament) scheme, France aimed at maintaining the *status quo* which is to-day in her favour. This is not true. The French people, which have taken the first step in so many historical developments, know the world must continue to develop. But the French people have passed through much suffering and wish this development to take place without violence. The peaceful evolution of the world — such is the principal aim of French policy.



## PEACEFUL CHANGE AND ARTICLE 19 OF THE COVENANT

*by* DAVID MITRANY

A political society, if it is to rest upon our accepted modern standards of civilisation, must contain within it laws and organs capable of dealing with two essential and inter-related ends

I To keep social life peaceful, and

II To keep it progressive

The first is, of course, an obvious test of social advance. Modern society is distinguished from primitive and mediæval society by the restraint which it imposes upon the use of force as a means of settling differences of view or of interest among its citizens. But the two levels of society are still more deeply distinguished by the implications of the "modern" spirit, which no longer assume the existing order to be ordained and static. Our outlook postulates instead a continuous adaptation to changing needs and conditions as of the very essence of a healthy social life. A system which under some emotional impulse or authoritarian pressure would bring about an utter absence of conflict, but also an equal absence of any possibility for change, might be described as civilised in its structure, but hardly as civilised in its life.

In national society these two ends have always been closely related. The relation is natural to man. One meets individuals who by temperament incline to a forcible rather than to a peaceful arrangement, who enjoy a scrap for its own sake and cannot be restrained from indulging in it by any attention to their needs. But social violence is seldom as wilful. Groups and peoples have resorted to it when they desired some change passionately, but have had no other means of securing it. The history of every revolution is a story of blocked channels of change. And therefore, in the long run, the forbidding of violence has been successful only when it was but the negative side of a system which included also positive provisions for peaceful change. The argument applies, if anything, with greater force to international society.

In our time it is inconceivable that a State would engage rashly in war. War is accepted only in search of some change which is vital, or which is deemed to be so. The leaders of every State which found itself involved in conflict in August of 1914, passed through doubts and agony before they declared for war, and the ravages of that war, and the leadership of certain statesmen, made the Western World adopt means which should restrain in future the use of force. But because of the circumstances in which the new system took birth — with our hearts in revolt against the cruelty of war, but with our minds as yet uninstructed in the requirements of peace — the new system has not dealt with the second end in any degree as deliberately as with the first. It is safe to prophesy that such an incomplete system will be incomplete in its results.



We have in this respect made little actual advance on the previous system, and have learned little from the lessons of which the nineteenth century is so full. The last century made extensive use of international conferences as a means of organising the life of the world of States. But they tried to do so in treaties and conventions which were every time assumed to create a stable and unchallengeable arrangement, and whose fruits were therefore rotten as soon as they were ripe." The efforts of the Congress of Vienna were comprehensive, yet the final act of that imposing forum was reversed within less than a generation. Perhaps the largest number of meetings and treaties were devoted to the Eastern Question yet no issue has proved more fickle in conforming to the prescription of those would be permanent settlements. International treaties have too often attempted to give a juridical finality to the ever moving problems of social life.

It is true that since the end of the Middle Ages means have been sought to escape this incongruity. The rule *rebus sic stantibus* was taken from civil law and allowed to play nominally an important part in international agreements. But at the same time the principle of the sanctity of treaties was erected into a pedestal of the law of nations. Not unnaturally it was a principle which found, perhaps more than any other acceptance among jurists. It rested, of course, on the assumption that nations enter into treaties of their own free will and in order to make the principle workable, the assumption had to be applied also to treaties of peace. The Turks alone, before their diplomacy became Westernised, had the good sense to give to their peace settlements the form of a truce concluded for a fixed number of years. The general rule now is to declare them eternal. Most jurists make no concession of principle for obligations imposed forcibly by treaties of peace and as such treaties are, by their very nature, among the most drastic instruments of international change, their provisions are among the most stoutly defended by their beneficiaries. A war has usually been needed to change a treaty of peace. This political inconsistency of the pre League system found typical expression in the London Protocol of January 1871. The validity of the rule *rebus sic stantibus* was then formally recognised but at the same time the Protocol insisted on the essential principle of the law of nations that no Power can free itself from the engagements of a treaty or modify its provisions without the consent of the contracting Powers. Moreover the rule *rebus sic stantibus* was obscure in its meaning and vague in its purport. No criteria were laid down for its application and no organs were created for their appraisal. Hence its formal acceptance only created a standing of contradiction between the principle of the sanctity of treaties and the dogma of the sanctity of the State.

No change occurred in that state of things during the fifty years which followed the London Protocol. There was a wish to check in the world of States the working of the Darwinian law but there was no provision for any alternative law of evolution. Perpetual immobility could have



been the only expectation. Hence, by contrast, Article 19 of the Covenant had in intention a revolutionary significance. Its purpose clearly was to turn the rule *rebus sic stantibus* from a barren formula into a living reality. It declared it to be, by implication, a working principle of international society, and a principle, moreover, to be weighed and applied by the new international authority. From a nominal reservation it made of it, therefore, an actual obligation — an element as active and valid as the rest of the specific arrangements laid down for the regulation of international life. But having gone so very far in principle, Article 19 made little advance in practice. The very hesitations which surrounded its birth were due, it would seem, less to indifference than to a fearful sense of the far-reaching issues that were looming behind those few lines. And so the idea of the Article was allowed to stay in, but nothing was done to give it body, no provisions were laid down either then or later for its practical use. As international treaties still form the main substance of international law, and as the members of the League still are sovereign States, it follows that now, as before, the rules of international life are governed by treaties, and as treaties are determined by the will of the sovereign States — thus leaving Article 19 for the time being to be more a promise than an achievement.

Its part in the new international system was tested in 1921, when Bolivia faced the Second Assembly of the League with a demand for the revision of the treaty of peace which she had concluded with Chile in 1904. The treaty had deprived Bolivia of direct access to the sea, and she was now anxious to use the instrument supposedly contained in Article 19 to re-establish what she claimed to be a vital condition for her national existence. But the Assembly adjudged the request to be inadmissible. Article 19 authorises the Assembly to "advise" parties concerning a change of treaty, Bolivia's demand for the revision of a treaty therefore went beyond the competence of the Assembly. More suggestive than this inevitable formal decision were some of the opinions secured by the two States from various eminent authorities on international law. Mr John W. Davis maintained that a treaty could be revised only by the common accord of the two parties concerned, which is of course an elementary principle of existing international law, but in effect also a negation of Article 19. M. Charles Dupuis went further, and maintained that the Article did not justify even an open discussion of the issue within the Assembly. The Assembly was only entitled, and that if unanimous, to invite the two parties to discuss a change. He added a point which is worth retaining: that Article 10 would in any case preclude a revision of frontiers. But perhaps the most significant argument was that submitted by M. Paul Fauchille. He denied that the case was one of international concern, as endangering peace, for nothing had occurred since 1904 to create a state of conflict between Bolivia and Chile.

So interpreted, Article 19 would almost become an invitation to create



such a state of danger as a means of forcing the Assembly to take the issue into consideration. That is indeed a fairly true reading of the present state of affairs. In so far as issues of this nature are taken up at all, it is only when they have reached the point of conflict — a state of things which derives logically from the sanctity of treaties and from the absence of systematic means for bringing about a change in them. As things are, a party can only change a treaty by breaking it.

If we were therefore to ask ourselves — What are the essential arrangements that enable a society to be peaceful and progressive? — the answer could be confined to two points. First, it is essential that such a society should have means which facilitate, and if need be enforce, respect for rules and agreements. Taking into account its youth and its novelty the League is well provided with means to that end. The second requirement consists of means for adapting those rules and agreements to changing conditions. For this task the League is hardly equipped at all.

The important thing is to get changes through common agreement, and to get them in due relation to factors and conditions affecting the life of the several peoples, as ascertained impartially and realistically.

The present tendency leans heavily in the direction of strengthening the means for the maintenance of the existing state of things. In so far as we advance in that direction, while neglecting the simultaneous development of means for peaceful change, we are deepening the discrepancy to which attention has been drawn at the beginning. The League, or any other international body would thus acquire increasingly the rôle of a policeman and lose increasingly the merits of a Government until, if carried far enough, such an evolution would end by causing the League to degenerate into another Holy Alliance. Stagnation would then be the rule and revolution the outcome.

The other alternative would be that international society should refuse its protection for arrangements of which it did not approve and which it would have no power to improve. It would thus accept to ensure only those arrangements which conformed to the new standards of international life. In that way the balance between peace and progress would be held more evenly and the League would not be charged with the odious task of protecting injustice or faced with the weakening necessity of condoning revolt.

If we assume that it is desirable to extend the scope and effectiveness of Article 19 we would need to find out

1. How the organs and provisions of the League could act automatically whenever a problem arises, without waiting until it has assumed the character of a conflict
2. How the organs concerned, whatever their standing could be enabled to consider by right *all* the issues involved in the problem submitted to them
3. And how and in what degree the conclusions of such organs



could be linked up to a more definite authority of execution — with due safeguards for delay, and for continuous adaptation to any subsequent change in the conditions which determined the original findings

. A practical postscript . If we insist on the need of our taking up the problem of Peaceful Change it is for two reasons chiefly . First, because that problem has been neglected all too long by students of international organization, secondly, because it has thus been left to be trailed about by national propagandists merely as an issue of topical politics . Their main concern is with some revision of frontier — the thing that divides, peaceful change would rather concentrate on the things which bind and unite . Some change of frontier there may well be, but territorial changes make little difference in the life of the world, and that difference is not always for the better. The changes which work for progress are rather those which cause frontiers to be forgotten, which remove material barriers and promote human intercourse, which mitigate political sectionalism, as in the treatment of national minorities, and further an understanding state of mind . Revision of frontiers, after all, remains a concession to nationalism, constructive peaceful change would be a contribution to internationalism . Yet, until now, instead of being discussed as a vital part of any system of international peace, it has been stridently and discordantly pressed as a matter of certain momentary and limited national grievances

One group of States and section of opinion speaks of security as if it were an end in itself . But security is not a particular system of social organisation. It is rather a *state of things*, which allows communal life to unfold itself and to develop without being periodically and violently dislocated . That state of things, that state of law and order, has long been found essential for the good life of the individuals in a community, it is now increasingly found essential for the good life of the nations, who are the citizens of the world community . For the organization of security must be commensurate with the social life which it is to render secure . In the Middle Ages, when social life was encompassed within the modest frame of the city, economically almost autonomous, that city life was protected by an encircling wall, with sundry fortified gates, still to be seen in places . Why were the walls allowed to fall in ruins, and the gates to stand merely as monuments to a life past beyond recall ? Because, in time, social life had overflowed beyond the limits of those political corslets. It is no less true that, especially within the last century, social life has widely overflowed beyond the walls of the national State, and that in obstinately persevering in the habit of trying to protect it with the means of these citadel-States we are, in truth, merely thwarting it and periodically putting it in jeopardy . They can protect effectively neither our possessions nor our investments, neither our external trade nor indeed our internal health . To protect ourselves against the evil of epidemics, or of nar-



coties, we have not raised high walls around our countries, but have attacked instead the evil at its source. The walls of the State can no longer protect us even at home against the new offensives of the air whether by bombs or by words much less can they protect the many threads which move continually to and fro beyond the frontiers to weave the fabric of our daily prosperous existence. In short, when long ago social life overflowed the bounds of the city walls, the city system of security had to be widened also. Collective security is merely the extension of that protection to the new dimensions of our social life.

Once we realise that, we shall more readily appreciate the voices which say in effect "What interest have we to provide security for a state of things which we dislike, and which is unjust to us?" To them, a reliable system of security without simultaneous provisions for peaceful change, seems not a promise but a denial of better times. It is little use pointing out the cost of war to people who feel they are being cheated of the benefits of peace. Admittedly the problem of peaceful change is complex in the extreme and not to be solved by a few skilful texts. But the inclusion of fundamentals as part and parcel of the new collective system would at once bring about that psychological *détente* which is essential for its success. The malcontents may be willing for the sake of peace, to wait a few years if they have a prospect that in time their claim would be heard but without that prospect they have no choice but to press their claim relentlessly and even offensively lest it lapse by default. Moreover only in such a juxtaposition could we point out to them, with some prospect of carrying conviction, that the satisfaction of their claim would be worth little unless they could at the same time be made secure in its enjoyment. And this indicates the true answer to the question put before. Whether security and peaceful change are independent of each other and can be pursued separately. The answer is that they are both equally vital links in the same chain of progress, and that the chain cannot hold and run until they are both wrought stoutly together.

The line of progress in municipal as in international society therefore is to assure social progress and to safeguard it through political security. Though the second thus appears and rightly as a function of the first it may be argued that always and everywhere the order of building up a civilised social organization has been, first, to establish the rule of law and then, under its protection to advance gradually but securely the reign of social justice. But it is equally true that in every instance the assumption of authority by princes or by peoples to protect the existing order also included the assumption of authority to change it. Executive authority has under no form of government been a mere police. The later separation of powers to which we are accustomed was a convenient technical device, but it continued to embrace as closely as before the duty to protect what existed with the right to adapt it to changing conditions and needs. Admittedly it is useless to think of peaceful



change without making sure of peace, and one can see how easily this may lead to the assumption that therefore security must come first. But there is in this really a confusion of categories. Security, peace, is a set and constant mechanism, change is a dynamic and continuous process. They are not interchangeable, the one is no substitute for the other. As acts of government they will vary in tempo and emphasis, as constitutional devices they must be set up together. And it is with the creation of an international constitution that we are now concerned.

The time is come, indeed, to ask ourselves whether the delays and disappointments we have suffered in the setting up of the new international order are not due, at bottom, precisely to this fact, that our attempts have intended to start with some one truncated part of what can only work as a cohesive whole. As different groups of interest favoured at the moment different parts, and suspected the working of others, none has yet worked effectively. Instead, the division of Continental opinion into two camps has if anything been deepened. For this reason, and because of their greater experience in adapting and applying new forms of government, it rests especially with English and American students to endeavour to work out that synthesis which alone will end the present deadlock in outlook and action.

## ITALY

(Centro Italiano di Alti Studi Internazionali)

### SOME LEGAL ASPECTS OF THE PROBLEM OF COLLECTIVE SECURITY

by SCIPIONE GEMMA (*translation*)

It has not thus far been possible to overcome the apparent contradiction between Article 10 of the Covenant, at least in so far as it is interpreted as representing the consolidation of a territorial *status quo* for an indefinite period, and Article 19 of the same Covenant, which provides for the reconsideration of treaties and of situations whose continuance might endanger peace.

It is reasonable to attribute to Article 10, as Scialoja had already argued, a function of defence of possession, in no way different from that which, for the regulation of private relations, is embodied in many civil codes. Its purpose is not to stabilise the present world-situation *sub specie aeternitatis*, but to prevent individual aggression in the same way in which private law defends possession without prejudice to ownership.

Thus understood, Article 10 is no longer in contradiction with Article 19, provided the latter is properly interpreted.

It cannot be doubted that if we desire tranquillity, and consequently the security of each one in the international field, States must likewise be offered a *legal* way of making good their claims, at least those which are fundamental for their preservation and their development and



which they consider incompatible with a given situation. Article 19 of the Covenant should fulfil that very function. But that Article is interpreted to mean that the League, presented with a request for the reconsideration of treaties which have ceased to be applicable, or led to consider international situations whose continuance endangers the peace of the world, can reach decisions only unanimously *including the votes of the interested parties*.

If this interpretation be maintained, it is evident that there will always be at least one interested party who will oppose a *liberum veto* thus destroying all possibility of a peaceful and regular solution. The innovation introduced by the Covenant in contrast to former law should have consisted precisely in giving each member of the League, in case it found itself in serious disagreement with another member (which it had been impossible to settle by the ordinary methods of negotiation or of compromise reached through arbitration) the possibility of asking the other members of the League to intervene, thus sparing both it and its adversary the use of force. This would have been likewise a form of collective security if not always effective, at least certainly logical.

But if in practice, this means is taken away by requiring not only a unanimous vote in the Assembly but the consent of the adverse party to the claimant's request as well, — a consent which, as is well known, cannot be obtained, — it is impossible to forbid the plaintiff since a social solution is refused to him *a priori* to think of employing individual means. The interpretation of Article 19 according to which, in case of controversy the decision of the members of the League should be reached without regard to the vote of the interested States, is already considered very favourably as far as doctrine is concerned, but this interpretation is still obstinately opposed by certain diplomats and this explains why Article 19 although it has been invoked several times has hitherto led to no practical results.

## NETHERLANDS

Netherlands Co-ordinating Committee for International Relations)

### COLLECTIVE SECURITY

by J. LINSBURG and H. J. W. VERZIJL (*translation*)

The main outlines of the system are quite clearly drawn however serious may be the disputes regarding the details of its application. It will be agreed, in principle that the inescapable necessity must be recognised of submitting all international disputes of a legal character to the Permanent Court of International Justice which has demonstrated its value of reducing more and more the reservations which still block only too often the path of justice of creating additional organs



to settle non-justiciable disputes or to facilitate their settlement by common consent. However, the great majority of these questions of judicial organisation are so technical in character that it would not be opportune to place them on the agenda of the coming conference. Only certain particular problems, of extreme importance for collective security, deserve to be examined within the general limits of its programme.

(a) Most serious of all is the question of the revision of treaties considered intolerable by one of the parties concerned. In the present state of legal organization, there exists no practicable method of dealing with these cases. Indeed, it is hardly conceivable that such a method will be developed in the near future. In most cases, the claims of the different parties are too diametrically opposed to offer any possibility of a prompt agreement. The complex character of the problems under consideration does not even permit the illusion of a possible solution satisfactory to both parties and not rather apt to create, in the party making concessions, a sense of grievance similar to that previously nourished by the other. We even believe that, if the parties had sufficient confidence in certain Powers or in impartial bodies to submit their disputes to them, those Powers or bodies would hardly find it possible to propose a settlement meeting completely the requirements of international justice taken in its highest sense. Under these circumstances, only one solution is possible for the moment — that dictated by the political prudence which led to the German-Polish Pact of non-aggression of January 26, 1934, the underlying idea of this pact should be generalised until the moment arrives when a *communis opinio* may become sufficiently mature to permit compromises which, at present, still appear absolutely impossible. Above all, it would be a fatal error to attempt, in connection with certain burning questions of the present moment, to impose on the international legal order the principle of majority decisions relative to the revision of existing legal situations, — an innovation which even the "neutral" Powers would rightly oppose, by reason of the incalculable consequences which it might entail.

(b) The same statement may be made in regard to internal questions which international law still leaves to the exclusive jurisdiction of one of the States in question. As long as positive international law has not brought these matters within its domain, either by means of a systematic codification, or by the slower process of international custom or the accumulation of judicial precedent, the States dissatisfied with the present legal situation must resign themselves to it and make up their minds to intensify their efforts to clear the way toward new conceptions.

(c) In regard to the settlement of disputes of a legal character, or of disputes of a different nature voluntarily submitted by the parties to an international tribunal, the new law must necessarily sanction the principle of the compulsory and executory character of the award once



given. This principle imposes on the community of States a strict obligation either to see to the execution of the award itself, or to give the necessary authorisation to the winning party. International organization cannot allow decisions regularly handed down to remain unexecuted. In these cases, to forbid the State concerned to resort to force would be equivalent to sanctioning injustice, which would completely distort international relations and the remedy would be worse than the disease.

## POLAND

(Central Committee of Polish Institutions of Political Science)

### RESPECT OF INTERNATIONAL OBLIGATIONS

#### REVISION OF TREATIES AND INTERNATIONAL SITUATIONS

by LUDWIK EHRLICH (*translation*)

At the Conference of Paris in 1919 as various details of the peace treaties were being discussed, the question was raised whether it would not be well to provide a regular procedure for modifying if the case should arise any provisions of those treaties which might cease to correspond to existing conditions. There was, of course, no question of changing the venerable principle of international law stated for example in the famous London Protocol of 1871 according to which a convention cannot be modified or abrogated except by the free consent of the parties to it. What was sought was a way of facilitating in advance an agreement, if the case should arise, with a view to the modification of the treaties. Such was the genesis of Article 19 of the Covenant of the League of Nations. As is well known the present text of this article grew out of the attempts which were made to provide for the possibility of territorial modifications. The important publication of Mr David Hunter Miller which includes the minutes of the commission which drew up the Covenant of the League of Nations contains on this subject authentic and accurate details.

Article 19 has given rise in theory and practice to a whole series of misunderstandings. It is therefore necessary first to analyse this article and then, in conformity with the principles of international law and also with the practice of the Permanent Court of International Justice to consider whether in the history of this article there is anything of such a nature as to vitiate the conclusions drawn from its text.

The meaning of Article 19 is simply this: the Assembly may unanimously declare that the time has come for the different members of the League of Nations to consider whether the treaties concluded with other States are still entirely applicable and whether there are no



international conditions whose continuance might endanger the peace of the world

In principle, then, there is no question of the Assembly examining all treaties, still less, of its "reconsidering" particular treaties. The Assembly has only to formulate the declaration that the time has come to undertake the consideration of treaties in general and of international conditions in particular, but this consideration is to be undertaken by the various members of the League of Nations and in particular by those among them who have an interest at stake in the treaties or conditions in question. Article 19 does not state under what form and under what conditions these matters are to be considered. Several possibilities are available: action by individual States or by groups of States, or the calling of a general conference. Indeed, it would even be possible for the Assembly to adopt unanimously a resolution calling upon each of its members to undertake during the session of the Assembly the consideration of the treaties to which it was a party. In any case, it is the States concerned which have an active part to play relative to each treaty and to each situation, and not the Assembly as such.

This interpretation clearly follows from the text of Article 19. In the first place, that text speaks only of the Assembly and not of the Council. And yet, according to Article 4 of the Covenant of the League of Nations the powers of the Council are coextensive with those of the Assembly (fixed by Article 3), since the Council as well as the Assembly "may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world."

The question therefore arises why Article 19 conferred on the Assembly and not on the Council competence regarding the consideration of treaties and of international conditions. The answer is plain. The article does not refer to individual treaties, for if it did, the Council according to Article 4, might take charge of the matter and simply invite the States concerned to attend its meetings. If the Assembly is charged with this business, it is because the matter to be discussed concerns or may concern all the members of the Assembly. For it is impossible to tell in advance what treaty or what international condition may at some time or other be taken under consideration in accordance with the terms of Article 19. This article, then, does not refer to any specific treaty nor to any particular conditions. A well-known commentator has expressed the view that Article 19 is only a particular case in application of Article 11, which, by its second paragraph, authorises each Member of the League of Nations "to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends."

Now if Article 19 referred to specific situations, it would be in contradiction with Article 11, par. 2, which confers the power to act upon the



Assembly and the Council. Here again, the difference is precisely this that Article 11 speaks of specific situations while Article 19 refers to general situations. In other words Article 19 could be a special case in application of Article 11 par 2. only in the following sense whereas Article 11 is concerned with particular situations, Article 19 refers to conditions which are numerous, unspecified and highly diversified. It would be necessary therefore, in the spirit of Article 4, to invite to the meeting of the Council in which the affairs in question were to be discussed all the members of the League of Nations, — in other words to transform the Council into the Assembly. It is for this reason that Article 19 mentions only the Assembly.

Article 19 says that the Assembly may advise. It does not, therefore, contemplate the settlement of some specific problem requiring settlement by the Assembly of the League of Nations, but the granting of a general authority the exercise of which is so difficult as to require unanimity. That is why it is optional. The wording here is different from that of Article 15 for example ( "will submit." "will make arrangements.")

"The Assembly may from time to time." This expression occurs in other articles of the Covenant. It indicates that a given activity though it is repeated, does not take place at fixed dates. From time to time, then, refers to an activity which is not periodical, though it is not limited to a single occurrence. This leads to the conclusion that the resolution contemplated in Article 19 may be repeated, but each time with the same substance. This invariable substance is the invitation issued to the States to reconsider etc. If this invitation of the Assembly had to be taken as referring always to the same treaty or to the same international condition, it would signify a sort of proscription of that treaty or condition but this would not be reconcilable with the principles of equality and mutual respect between States. Hence Article 11 which refers to specific conditions does not contain the expression "from time to time." That expression occurs on the contrary in Articles 3 and 4, with reference to the sessions of the Council and of the Assembly. It is certainly not to be supposed that this expression is without importance. To do so would be to violate a cardinal principle of the interpretation of treaties.

According to Article 19 interpreted in the light of the rule laid down in Article 5 the invitation must be unanimously adopted. This principle does not seem open to question at present though there was a time when attempts were made to interpret Article 19 in such a way as to permit the passing of resolutions by a majority vote. It was alleged that, while unanimity is required when the Council *formulates plans* and *advises* under Article 8 when it *writes* under Article 17 when it *acts* under Article 11 par 2 it is not required when the Assembly *advises* under Article 19. This interpretation is purely arbitrary. The activity of the organs of the League of Nations in the exercise of their



formal powers must not be confused with their activity in the expression of wishes or of recommendations. The recommendations or expressions of wishes of the Council and of the Assembly may evidently be voted under rules which are entirely independent of those governing the exercise of the formal powers of the League of Nations. On the other hand, any activity of the League which is in conformity with the Covenant is equivalent, under Article 5, to a decision. To consider that a resolution voted in accordance with Article 19 has not the force of a decision would therefore amount to annulling Article 19. On the other hand, the fact that a resolution of this sort has no binding force does not obviate the requirement of unanimity. In principle, the whole activity of the Assembly and of the Council is limited to discussion and the passing of resolutions. Either these resolutions concern only procedure, and in that case a majority of the votes cast is sufficient, or they do not concern procedure. In the latter case, in the absence of a special provision in the Covenant or in the treaties, unanimity is required. The opposing theory implies that a resolution voted under Article 19<sup>1</sup> is not a resolution.<sup>2</sup>

Article 19 speaks of reconsideration and not of revision. The Assembly as such cannot undertake the revision of a treaty. But it is not even charged with reexamination, Article 19 states expressly that it is the members of the League of Nations who are to undertake the reconsideration in question. The action of the members of the League may correspond fully to the resolutions of the Assembly, though the latter invites or advises, but does not impose an obligation. But even if that action is in conformity with the resolutions of the Assembly, it need not go beyond a mere examination of the treaties in question. Must the Assembly, then, before reaching a decision, take under consideration treaties and conditions?<sup>3</sup> If the article concerned particular treaties or particular conditions, we might suppose that this was the case, but if so, what would be the object of the reconsideration undertaken by the parties, if it had already been carried out by the Assembly? There is only one case in which it would have an object: if the parties had to decide whether they could agree to change the treaty. But in that case, what would be the significance of "a reconsideration by the parties" as opposed to "the invitation issued by the Assembly," if the Assembly had considered the treaty in question beforehand? Why, then, does not Article 19 simply say that the Assembly may examine a treaty and recommend certain modifications to the parties? But Article 19 empowers the Assembly neither to revise nor to examine a treaty. It must therefore be admitted, in harmony with the principles of interpretation, that the Assembly has no power other than that which is derived from Article 19 taken literally, that is to say, that it has only

<sup>1</sup> Schücking and Wehberg, *Die Satzung des Völkerbundes*, ed. 2, 663 and 469

<sup>2</sup> *Ibid.*, 335

<sup>3</sup> *Ibid.*, 662



the power to advise the Members of the League of Nations generally from time to time to consider what treaties have become inapplicable and what international conditions may endanger the peace of the world.

The resolutions passed under Article 19 are addressed to the members of the League of Nations and not, as in Article 8 to the several Governments. Article 19 speaks of treaties and conditions, not of *any* treaty or *any* situation," as does for example Article 11 which speaks of *any* war or the English text of Articles 12, 13 and 15 which speak of *any* dispute."

There is no mention, either of the parties to the dispute, as in Article 15. The reference of the Article is to all the members of the League of Nations and to all the treaties and conditions which may at any time, fall within the scope of Article 19.

Treaties which have become inapplicable are those which it is no longer possible to continue to apply. Obviously a treaty can be applied only until it has ceased to impose an obligation and a treaty imposes an obligation only until the necessity of executing it has ceased. The binding force of a treaty or of an undertaking arising out of a treaty is exhausted at the moment when that treaty or that undertaking has been executed. A State which has undertaken to pay certain sums of money is freed from that undertaking once the sums have been paid in full the treaty by which the State was bound ceases thenceforth to be applicable.

Similarly a treaty or a clause by which a State has abandoned its titles and its rights to a territory whose submission to the sovereignty of another State it has agreed to ceases to impose an obligation from the moment when the second State has really occupied the territory in question.

If on the contrary this treaty or certain provisions of this treaty have not been executed whether because the second State has neglected to begin or to pursue its execution, or because the treaty in question is conditioned by the obligation to act in a certain way then and to that extent the problem of its applicability or inapplicability may arise.

It is, then, a logical condition of the inapplicability of a treaty that at the moment when the alleged impossibility of fulfilling or continuing to fulfil its obligations appears, those obligations should still exist bearing in mind that obligations already fulfilled no longer exist and that it is consequently impossible to speak of the possibility or impossibility of fulfilling them. This is what distinguishes for example, a cession of territory from a right of occupation and administration which has fallen to one State in the territory of another State. In the latter case upon the expiration of the treaty which confers these rights the occupied territory returns to its sovereign. On the contrary a so-called treaty of cession, by which a State gives up its sovereignty in a certain territory and consents to the submission of this territory to the



sovereignty of another State, is exhausted from the moment when the territory in question is occupied by the second State. The authority exercised by a State in a territory subjected to its sovereignty is immediate and original, it is entirely independent of titles of possession (which is merely a conception of civil law) such as that of acquisition by treaty. It is, for example, a matter of complete indifference, from the standpoint of international law, upon what legal basis may rest the fact that Calais is under French sovereignty or Breslau under the sovereignty of Germany.

The inapplicability of a treaty ought to be judged on the basis of the principle of "a scrupulous respect for all treaty obligations," which is expressly set forth by the Preamble of the Covenant of the League of Nations. This principle is, indeed, the corner-stone of the Covenant and of the League itself. Moreover, as has been stated above, it grows out of the most basic principle of international law. There is therefore a strong presumption in favour of the applicability of treaties which are not in contradiction with the Covenant itself.

There remains the consideration "of international conditions whose continuance might endanger the peace of the world." These conditions may be extremely varied: for example, the existence on the territory of a State of organizations whose object is the carrying on of sabotage within one or more other States, tariff and commercial complications, etc., the carrying on by a State, or under its protection, of systematic propaganda against another State, etc. But the expression "international conditions whose continuance might endanger the peace of the world" must be understood to refer only to conditions of such a nature as to involve a violation of the fundamental rights of a State or of rights acquired by a State by treaty, whether that violation is due directly or indirectly to another State. There can be no question here of a State, which has demanded something from another State, being allowed to argue that failure to satisfy its demands might endanger the peace of the world. In this case, indeed, it is those demands themselves which would endanger world peace. If Article 19 can be applied at all in this case, it is obviously to repress the appetites of the State which has made such demands. In this case, the principle of English law, that no one may profit by his own arbitrary act, — a principle which has its application in international law also —, should be fully and completely applied.

Article 19, then, authorises the Assembly, by unanimous decision, to encourage either two-party discussions or regional discussions, or again, to call a general conference, with the object of reconsidering treaties which the parties might come to consider as inapplicable and of considering international conditions whose continuance might endanger the peace of the world.

But under these conditions, is not Article 19, from the very outset, stripped of any real significance?



- 2) if one of these subjects demands of another subject of international law that the latter behave or act in a certain way and if the latter refuses
- 3) if the demand in question is based on rules which are binding on these two subjects namely
  - (a) on the rules of international common law or
  - (b) on rules established by treaties.

From the international dispute taken in this sense must be distinguished the case in which a State endeavours to bring another State to a certain mode of action or behaviour without taking its stand on the rules of international law which are binding for the two parties.

This latter case may be a normal result of international relations, as when a State tries to bring another State to conclude with it a treaty of commerce, and, in particular, when it endeavours to obtain some specific advantage by such a treaty.

However, such demands may lead to strife. Strife occurs when at least one of the parties does not aim at obtaining the assent of the other on the basis of the law which is binding on both of them nor by way of normal conciliation of their respective interests but tends to strike by political, economic or military means as the so-called fundamental rights of the other State, — rights arising from the fact that the latter is a member of the international community (territorial integrity political independence) — with a view to forcing the second State to submit to its conditions. Strife in its extreme form is war. But strife may also exist between States which continue to maintain diplomatic relations with one another. It may consist in systematic propaganda against a State, addressed to other States in the fomenting of disorder and difficulties within another State, etc.

War which breaks off all peaceful relations between the belligerents is only one type of strife among others.

The act of beginning strife is always an aggression. It may consist *in recourse to arms* that is what is commonly meant by aggression. But this term has also as we have just seen, a broader meaning.

As the above definition shows international disputes are very frequent phenomena. Two States cannot maintain close diplomatic relations without being continually involved in disputes of more or less importance. But the term international dispute is generally restricted to disputes which, by their magnitude are of such a nature as to compromise or even to destroy peaceful relations between two subjects of international law.

The distinction between justiciable and non justiciable disputes cannot be maintained within the framework of the definition of the dispute which we have given above. There is in fact no dispute between two parties if the demands of one and the refusal of the other are not based on a consideration of their respective rights rights which



are based on common international law or on treaties. A demand based on the arbitrary will of one party does not create a dispute, it gives rise, purely and simply, to an aggression.

It goes without saying that a demand of this sort is the very negation of international law. It is therefore impossible to take account of it in a discussion whose point of departure is the binding force of international law.

If, then, by political or non-justiciable dispute is meant a dispute in which one of the parties takes its stand not upon legal rules common to both parties, but solely on the consideration of those of its interests which are not guaranteed by international law, it must be said that in this case the concept of the dispute disappears and that we are faced either with an attempt on the part of two parties to reach an agreement, in their own best interest, or with strife.

If a State demand from another State something which it cannot legally demand, and the other State refuse, international law requires that the first of these States refrain from modifying or attempting to modify the existing situation.

Judge Kellogg was quite right when, in the remarks annexed to an ordinance which the Permanent Court of International Justice handed down in the case of the Free Zones of Haute Savoie and of the district of Gex,<sup>1</sup> he upheld the following thesis:

“What is a political question? It is a question which lies exclusively within the competence of a sovereign State. The establishment of tariffs, the regulation of immigration, the imposition of taxes and, in a word, every exercise of the governmental power inherent in a sovereign State, involves questions of this nature. There is no rule or principle of law, no norm of equity or justice, or even of conscience, which the Court can apply in passing on a political question, for the power of the State, in so far as it is not limited by treaties, remains unrestricted in this field.”

It is the business of diplomacy to harmonise the interests of States by means of solutions which each party will be able to regard as advantageous from its own point of view. If this attempt to establish harmony fails, it is permissible to make use of legal pressure. Any pressure is illegal whose object is to force a State to abandon rights which it possesses by virtue of its status as a subject of international law. International disputes are brought to an end either by an agreement between the parties, — which cannot be reached unless each of them is willing to make some concessions, or else by the imposition of the will of one State on another State: either the plaintiff State withdraws its demands or the State on which the demands have been made yields to them integrally.

The normal means of restoring concord between subjects of international law is to conciliate their interests, that is, to find a solution

<sup>1</sup> Permanent Court of International Justice (1930), A, No. 24, 41



which is in the interest of both parties, either by satisfying certain interests of one party and certain interests of the other or again, by satisfying the identical interests of both parties. Such should be the conscious task of diplomacy. It often happens, however, that means of pressure are employed, either by the use of threats to certain interests of another State or in case the latter refuses all conciliation, in the form of a positive action against those interests.

M. Lauterpacht is quite right, then, in rejecting the distinction between legal disputes and political disputes.

An international dispute is either not a dispute or it is a legal dispute which it is possible to settle on the basis of international common law or of treaty law.

Recently however the question has been raised whether it would not be possible to settle disputes on the basis of *equity* and not on that of international law. This question is based on a misunderstanding. In Roman law as in English law of the late Middle Ages the juridical conception of equity consisted in the application side by side with, or in place of rules of formal law of other rules derived from the principles of contemporary morality. Thenceforth formal law and morality on a footing of equality constituted a system which had binding force as between individuals, regardless of the wishes of the latter.

At Rome, equity was contrasted with civil law. In England, it grew up as a system founded in the last analysis on judicial precedents and rectifying or completing in this fashion the rigid principles of the traditional common law. The case is quite different with international law in which as matters stand at present no State is bound except by rules which it has implicitly or explicitly accepted. To create a system of equity which would stand in contrast with the common international law or to go a step farther and create a system of equity which would take the place of the stipulations of treaties would simply amount to overthrowing the present system of international law resting upon the principle of the sovereignty of the States. It would mean formulating the principle of a super national law which would be imposed on the States against their will. It is of course clear that the States can always set up a tribunal to which they would accord the right to settle disputes without regard to the traditional principles of international law. But it is also clear that in that case — unless indeed this tribunal had cognisance only of minor disputes — the States would thus be giving up their sovereignty since they would be staking their existence upon the decision which this tribunal might see fit to reach in a given case.

It is quite another matter if the principle of equity is to be applied to the settlement of disputes concerning more or less rigorously determined questions of detail such as for example those relative to



the rate of an indemnity, or of its percentages, to the tracing on the ground of a boundary, the general line of which is already established, to the establishment of specific regulations, etc. Indeed, States involved in a dispute have more than once accepted a settlement of this sort, and there is no doubt that the same thing will happen again in the future. However, the authority of international jurisprudence requires that tribunals be not given powers so broad that States will be obliged, in order to safeguard their sovereignty, to avoid submitting their disputes to them.

## PEACEFUL METHODS OF SETTLEMENT OF INTERNATIONAL DISPUTES

by JULIAN MAKOWSKI (*translation*)

Within the international community, collective security, which consists in the elimination of war as a means of settling international disputes, can rest only on collective pacts or on coordinated systems of bilateral pacts. It is in this direction that contemporary international practice is developing, and a whole series of collective pacts have been signed since the war, by means of which the parties have tried to organise security within a certain area of political action. These regional groups may be joined together by links of a higher order, in an effort to extend this system to an entire continent and thence to the whole civilised world.

If, however, within a group of States, war as a means of settling disputes is excluded, it is indispensable that they be given some means of settling such disputes in another way. Otherwise it is highly probable that they will settle them extra-legally. The close connection that exists between the renunciation of war and the necessity of establishing peaceful procedures has frequently been referred to by States in their accords. We shall cite as examples a few of the most recent cases.

We read in Article 2 of the Rhine Pact (London, December 1, 1925)

“Germany and Belgium and similarly Germany and France undertake reciprocally not to attack nor invade one another and in no case to resort to war against one another.”

Farther on, in Article 3, we read

“In consideration of the engagements contracted by them respectively in Article 2 of the present treaty, Germany and Belgium and Germany and France undertake to settle by peaceful means and in the following manner all questions of whatever nature which may arise between them and which cannot be settled by ordinary diplomatic methods.”

The causal connection between these two articles is evident. The Franco-German and Belgo-German arbitration conventions concluded at the same time provide for a similar procedure.



The Pact of Paris of August 27 1928 known under the name of the Kellogg Pact, threw into still greater relief this relation of cause to effect. In Article 1 the parties solemnly renounce war in their reciprocal relations and declare that all disputes which may arise between them are to be settled by peaceful means. The universal character of the Kellogg Pact, further strengthened by the Litvinoff Protocol (Moscow February 9 1929) makes it clear that the rule which correlates the renunciation of war with peaceful procedure represents the consensus of the States belonging to the international community. This view is confirmed by the fact that reference is made to this Pact in the preambles of the principal pacts of non-aggression which have since been concluded: the pacts between Poland and the U.S.S.R. Lithuania and the U.S.S.R. Latvia and the U.S.S.R. Finland and the U.S.S.R. Estonia and the U.S.S.R. France and the U.S.S.R. Germany and Poland, etc.

These Pacts, indeed, express this same idea in so many words (Art. 4 of the Russo-Latvian Pact, Riga, February 3 1932. Art. 4 of the Russo-Estonian Treaty Moscow May 4, 1932. Art. 3 of the Preamble of the Russo-Polish Pact, Moscow July 25 1932. Art. 6 of the Russo-French Pact of non-aggression, Paris, November 29 1932. etc. These are it is true, bilateral conventions which at first glance cannot belong to the system of collective security. But in view of the fact that the Soviet Union is a party to all these pacts, the system which they constitute may properly be regarded as one convention of a quasi-multilateral type of a type which might be designated as star-shaped and which, in consequence, constitutes one of the modalities of collective security.

The affirmation that the condemnation of war is correlative with peaceful procedure is not the exclusive contribution of the nations of Eurasia. The States of the American continent have adopted the same attitude. Their codifying activity has brought forth international documents which expressly confirm this principle.

On October 10 1933 Mexico, Paraguay Uruguay Argentina Brazil and Chile signed at Rio de Janeiro a Treaty of non aggression and conciliation. We read in the preamble:

*The undersigned States, desirous of contributing to the maintenance of peace, with the intention of condemning wars of aggression and territorial conquests carried out by force of arms in view of replacing them by peaceful solutions founded on the high ideals of justice and equity in the conviction that one of the most effective means of ensuring the moral and material benefits derived from world peace is the organization of a permanent system of conciliation of international disputes decide to give to these intentions the form of a convention of non aggression and concord."*

Similarly in the Convention concerning the rights and duties of States concluded at Montevideo on December 26 1933 in connection



with the 17th Pan-American Conference, we read, in Article 10 of this Convention

“The maintenance of peace is of the highest interest for the States. The disputes which may arise between them for whatever reason must be settled by peaceful methods.”

Finally, we may cite the reply made by the German Government to the League of Nations relative to the harmonising of the Covenant of the League with the Kellogg Pact

“It is impossible to combat war, by organizing measures against the aggressor, without preparing, at the same time and above all, peaceful means for the settlement of all conflicts between States, without exception.”

“No organic construction of the outlawry of war can be carried out except side by side with an examination and, if the need arises, an organic development of the system of the peaceful settlement of disputes.”

“The only solution which can offer prospects of success and of duration is a solution guaranteeing a proper balance between the prohibition of war and the peaceful settlement of differences.”

## RUMANIA

(Rumanian Social Institute)

### MEANS OF ENSURING THE PROGRESS OF LAW AND THE RESPECT OF JUSTICE APART FROM WAR

by G. SOFRONIE (*translation*)

What would be the most effective means of attaining this goal, — means which would at the same time accomplish most fully the natural elimination of resort to force? It seems to us that they must be sought, for the most part, in a return to the intentions of the artisans of the new international order and especially of the authors of the Covenant of the League of Nations. Now it must not be forgotten that, not only in the final phase of the Wilsonian conception, but also in the thought of the majority of the members of the First Commission of the Peace Conference, the League of Nations which was to be constituted was destined not only to create a lasting peace, but also to guarantee the execution and the observation of the treaties which, at that moment, were taking legal form.

That is why the Covenant of the League of Nations is transcribed “like an impressive frontispiece” (T. Larnaudé) at the beginning of each of the peace treaties.



In spite of recent denials, the revisionist movement continues. Its object is the modification of the peace treaties in their most important clauses — the territorial provisions, designed to satisfy legitimate and clearly-defined national claims (Wilson). Those treaties based as they were on the principle of nationalities sought to give expression in their various provisions, and especially in their territorial clauses to the concept of law in international relations. This concept might well be reaffirmed in the form of a collective declaration that the territorial clauses must be observed. This affirmation might be made in various ways. And since a certain interested party demands that Article 19 be interpreted or modified, the Assembly of the League of Nations might take this opportunity to specify once for all, that Article 19 is not applicable to the territorial clauses, since those clauses have already been executed and do not endanger the peace of the world. It would be well to state, in an international text, that the territorial arrangement now in force is permanent, basing this statement on an objective interpretation of Article 19, already suggested by so many impartial commentators on the Covenant. This would be all the easier because the general legal conscience which is a justifying factor of the institutions and principles of the new international law recognises the national State, whose triumph was consecrated by the treaties of 1919-1920, as the most perfect form hitherto reached by the evolution of the forms of the State. It is destined to subsist until it is superseded by a higher and more perfect form, such as some people look for in a continental federal organization, and others in the still distant formation of a world State.

It might well be suggested, as a counterpart to this proposal which would serve the same end of furthering the idea of law that the regime of the protection of minorities be at last generalised, in accordance with a demand of long standing. This would constitute a return to the principle of the equality of the members of the international community a fundamental right which was violated in 1919-1920. In order to meet the objections of those States which consider themselves called upon to protect minorities and which do not regard as sufficient the constitutional-legislative guaranty of the rights of the individual member of a minority separated from his national State by circumstances independent of human will, such as the absence of territorial continuity these measures of international order might naturally be followed by that "spiritualisation of frontiers" (N. Titulesco) which by facilitating the restoration of an economic equilibrium would reduce to the vanishing point the economic drawbacks of the present regime.

The first step towards ensuring the progress of law is to make the law definite that is to present it in a positive form to the States and to the individuals who are to be called upon to respect it. The task no doubt will be difficult. It may even hamper the evolution of the principles of international law which is younger than other branches



of legal science and which is at present undergoing a period of active growth and definition, but it would be a useful task. In fact, if the priority of international law over domestic law were once recognised — whether that recognition were founded on the will of the States, as expressed by the procedure of reception of the dualists, or on the international primacy of the monists, or on the principle of the unity of public law, to adopt the language of present-day jurists — this verity could not fail to gain ground, for it would become more and more deeply embedded in the general consciousness, if the rule of international law were made positive. This would produce great practical advantages. A reform urgently demanded in recent years, — the reconciliation of the new international law with the provisions of the national constitutions —, would be carried out, thanks to the favourable dispositions of certain post-war constitutions. Positive international law, thus transformed into a constitutional rule, would be binding both on the State considered as “legal personification of the nation” and on the Governments which direct international relations, as well as on the governed, indifferent hitherto to the respect of the rules of international law, which they did not know, or knew only vaguely and imperfectly, and which, in any case, were not imposed on them as binding rules.

But out of this problem arises a question of great importance for the progress of the idea of law. Codifying the legal standard is not enough to give it precision and to make it known. Something more is needed if real progress is to be made toward the prevention of war, that is, toward the reduction of the number of cases of resort to force. It is essential that the Governments should respect and apply that standard. To this end, it is desirable that the principle embodied in Article 227 of the Treaty of Versailles be broadened and generalised by an international convention. The men at the head of Governments often bring on wars by provoking public opinion or by leading it astray in regard to international relations. Once these men know that they will be punished if they are guilty of violating the rules of international law, or of bringing about a war of aggression, the idea of law will have marked an important step forward. It is true that Article 227 of the Treaty of Versailles did not lead to any practical results, since the constitutional irresponsibility of the ex-Emperor William II and the maxim “*nulla poena sine lege*” were invoked. Nevertheless, this ground-breaking and even revolutionary text has, since 1919, the force of a precedent and of a warning. An accentuation of this principle, a formal declaration by the international community that it adopted that principle, especially at this moment, when certain Governments are preparing public opinion for war in the near future, would be more than a satisfaction and a guaranty given to public opinion. It would be an effective means of fostering the idea of law.



## PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES

by M. C. VULCAN (*Translation*)

If we refer to the famous definition of arbitration contained in the Convention of The Hague, "settlement of disputes between States by judges whom they have chosen and on the basis of observation of the law" we observe that it is rather difficult to trace a very definite limit between arbitration and judicial settlement.

In fact by reason of the presence of national judges in the Permanent Court of International Justice, judicial settlement is confided, in a certain measure — less, it is true, than arbitration — to judges chosen by the parties. Above all, the Court, like the arbitral tribunals, cannot pronounce judgment except on the basis of observation of the Law. Article 38 of its Statute, which enumerates the rules which the Court applies, is formal on this point. It is only quite exceptionally and as a subsidiary provision that it adds: "The present disposition does not limit the right of the Court, if the parties agree, to pass judgment *ex aequo et bono*."

If this is true, it may be asked whether arbitration and judicial settlement do not fulfil the same function and whether one of these two procedures is not doomed by this fact to gradual atrophy and perhaps even to extinction. But thanks to the advantages attached to its permanent character to the way in which the judges are appointed, and to the absence of the necessity of a compromise, thanks also to its quite recent origin, it is evident that the States will be inclined to prefer judicial settlement.

It is with the purpose of accentuating the difference between these two procedures and of marking more clearly the jurisdictional character of the Court that we have proposed the abolition of the institution of national judges and the adoption in its stead of the contrary principle of incompatibility between the function of judge and citizenship in one of the States which are parties to the dispute.

But in order to infuse new life into arbitration it would be necessary to go still farther by making it more elastic, in the sense that arbitrators would no longer be obliged to limit themselves, in pronouncing judgment, to the law alone.

The first example in this direction was given by the Geneva Protocol of 1923 in which the rôle of arbitrators was not merely that of judges deciding on the basis of law but also that of friendly mediators allowed to take account of all equitable considerations. (Report of M. Polini).

It is true that the same principle was adopted in the General Act of Geneva (Article 28) in which it is stated that if the compromise is silent on the point or if no compromise exists the tribunal shall apply the basic rules provided for the Court and in so far as no such rules applicable to the dispute exist the tribunal shall judge *ex aequo et bono*.



However, this power is accorded to arbitrators only when the four basic rules enumerated by the Statute of the Court cannot be applied; it is subsidiary, and it may well be asked whether it can ever be employed, since it is very difficult to imagine a case which is governed neither by conventions nor by international custom, neither by the general legal principles recognised by civilised nations nor by judicial decisions, nor by the teachings of the most competent publicists. These four great basic rules are broad enough to cover any dispute whatsoever, so that, if they are carefully analysed, it does not seem likely that arbitrators would ever be called upon to pass judgment *ex aequo et bono*.

Now practice reveals cases in which, though in principle a solution can be provided in strict adherence to the law, this solution would be far from settling the dispute. This is not due to the alleged organic incapacity of international law to settle all problems, nor to the supposed difference between legal and political disputes, but to the fact that international law — because of the absence of a legislative organ to adapt the law continually to the requirements of changing life — lags even farther than any other law behind the needs of society.

Certainly all disputes can be regulated by applying the law which is in force, but many hypotheses can be thought of in which such a solution, instead of eliminating the disputes from the programme, would only envenom them.

Even in internal law, where the existence of a public force makes it possible to reduce to silence a person who is wrong according to law but right according to justice, the lawmaker is obliged in the long run to intervene in order to harmonise law and justice. How, then, can it be possible, in international law, to neglect to organise a procedure destined to avoid, in similar cases, the consequences, iniquitous and dangerous for peace, of an award delivered in strict conformity with law? Such a procedure appears all the more necessary because there is no good reason to expect, even in the distant future, the creation of an international legislative power.

Arbitration could be organised in such a way as to satisfy this need. This would necessitate transforming the arbitrators from judges into friendly mediators, who would be authorised, not subsidiarily but as their principal power, to base their awards on equity and on the necessity of maintaining peace between the nations.

In this case it would naturally be necessary to change also the way in which the arbitrators are chosen, by reducing the rôle of the jurists and their number and increasing that of the diplomats, economists and statesmen.

To be sure, a very important objection comes to mind automatically: how are disputes which can and should be settled according to law to be distinguished from those for which such a solution, though possible in principle, would not be advisable from the standpoint of the maintenance of peace or would contradict too flagrantly the spirit of equity?



It seems impossible to indicate *a priori* a criterion the choice would have to be made for each particular case.

But who is to make it?

First of all the parties, who are better fitted than anyone to decide what sacrifices they can make for the maintenance of peace. The advantage over the system of the General Act would be that the parties would know at the outset that, if they went before the arbitrators, the solution would be in the nature of a compromise and the way in which these arbitrators were chosen might in itself inspire the parties with greater confidence by reason of the wisdom, ingenuity inventiveness and sense of realities which the arbitrators had already displayed.

But what if the parties did not agree to resort to this new kind of arbitration? In this case the affair would be brought in any event before the Permanent Court of International Justice. If the latter came to the conclusion that it would not be in the interest of peace and of good understanding between nations to settle the matter by the strict application of the law it would refer the parties to an arbitral tribunal.

In order to avoid the unseasonable character that such a procedure might have for the parties and in order to provide them with the possibility of reaching agreement by means of reciprocal concessions the present ordering of peaceful procedures should be modified in such a way as to accord a more important rôle to conciliation. The latter procedure should be applied obligatorily and for all disputes after the failure of direct negotiations and before any judicial or arbitral settlement.

This procedure is made obligatory at present, by the majority of treaties only in certain disputes, notably in those which are not juridical but it is merely optional for the others. This conception is expressed both in the Locarno treaties and in the General Act. Those treaties are very rare which submit all disputes, in the first instance and obligatorily to this procedure.

It is true that conciliation — whether it takes place before a commission or before the Council (Art. 11-15 of the Covenant) or the Assembly of the League of Nations — does not result in a decision which is binding on the parties but in a simple proposal for settlement which the parties are free to accept or to reject.

But this is exactly what constitutes the characteristic feature and the advantage of this procedure for in its desire to see the parties come to an agreement and to see its work crowned with success the organ of conciliation will tax its ingenuity to propose all possible solutions taking into consideration all suggestions showing itself sensitive to all the currents which lead to conflict and endeavouring to understand the psychological situation of the Government and of the peoples involved.



## RESPECT OF INTERNATIONAL OBLIGATIONS REVISION OF TREATIES AND INTERNATIONAL SITUATIONS

by MICHEL ANTONESCO (*translation*)

The revision of treaties and of international undertakings is not a means of obtaining collective security. On the contrary, revision will become the Trojan Horse of the present international organisation.

These are our arguments

(a) Instead of leading us toward security and stability, revision creates, in the present state of affairs, insecurity and instability.

International organisation, in an effort of transformation which has been going on steadily for a thousand years, is trying to find a fulcrum capable of ensuring its continuity.

The respect of international undertakings, whether as a matter of custom or of conscious necessity, has been hitherto the foundation of international order, a single organ for the creation of rules of international law has not yet been established, no judicial power of the international community exists as yet to impose the inflexible rule of international law or to complete it by its own judgment, there exists no coercive force capable of guaranteeing respect of law by its material authority. International integration has progressed and has indeed reached the point of creating rules and even common organs, but it has not yet succeeded in creating organs of its own, independent of the community.

Such then is the reality. No system of organisation of international security must neglect in its great zeal, however innocently, the social realities.

The rule of international law as well as the international organisation are social realities whose functioning must be followed and respected in guiding the collective activity and in recasting it in new common forms.

The present international organisation lives and evolves by means of a co-operation having a contractual character. International undertakings and their performance in good faith constitute therefore the only solid foundation of this organisation. To introduce into the present international obligation the unstable element of revision would be to destroy the efficacy still quite relative of that obligation, and to abandon it to the subjective judgment of each individual State.

Instead of consolidating the international order, then, the consecration of revision, in the present state of the international juridical community, would merely break one of the essential levers, created with difficulty by long and toilsome efforts.

The rule "*pacta sunt servanda*" and the sentiment of international legal obligation are still at present fragile realities, the universal legal conscience which flows out of them is not yet completely formed.



The two elements on which security is at present founded are the respect of rights and their stability

The rule *pacta sunt servanda* "is in itself a system ensuring the present international order a system preserving international security and founded on the idea of stability and the sentiment of international obligation, or good faith, is the element of continuity which renders the first named element more vigorous.

To admit revision, in whatever way is to weaken the respect of rights and their stability and to introduce insecurity and instability into the international community

(b) *Revisionism would lead to a decadence of international law*

Such a congenital infirmity of the rule of law would signify also a decadence of international law

It is in fact in the international legal conscience and in the respect of undertakings that legal doctrine seeks the basis of international law. The contemporary internationalists Le Fur, Politis, Reglade, Rousseau, Verdross, Spiropoulos, etc. see the basis of international law indeed, in a legal and moral system epitomised in the principle *pacta sunt servanda* a rule which is at once moral and legal

In order to reach this conclusion both legal doctrine and international organisation have made considerable efforts

From Vittoria Suarez and Grotius, who based the rule *pacta sunt servanda* on natural law to Kant who found a basis for it in the reason from Ahrens, Pasquale Fiore, Pradier Fodéré and others, who saw the same obligation of respect in the harmony between moral laws and law proper to Bluntschli who believed that civilisation lives only by fidelity to undertakings from Bentham Klüber and others who sought the basis of international order in interest or in irrevocable custom to Jassé who made it flow from the juridical conviction of obligativity — legal doctrine has passed through all the stages of evolution. As the social realities gradually confirmed the conservatism of the doctrine and strengthened the respect of international engagements, the doctrine gained in breadth, while at the same time it became more profound.

In order to strengthen this respect the effort has been made to push back its limits as far as possible to make it universalist in tendency, to protect it from unilateral tendencies and to subordinate it to the collectivity. The attempt has been made to suppress all exceptions to stress its omnipotence thus making it more objective and placing it above the will of the individual States

Since the Hegelian doctrine of the omnipotence of the State since the auto-limitation of Jellinek and the auto-obligation of Seeligman legal doctrine has sought to make the rule of international law more objective whether by making it flow out of a collective will (Tiepel) or out of a plural will welded into one (the system of *Utre harmonia*)



and not susceptible of unilateral change, whether by creating, by means of fictions or periodical realities, a hierarchy in which the rule "*pacta sunt servanda*" becomes the superior and creative principle (Kelsen, Buzilotti, Verdross)

The rule "*pacta sunt servanda*," a purely moral dogma, becomes a legal dogma, from a rule of national policy, it is converted into a rule of international law, from a unilateral and subjective system, it is transformed into an objective and universalist rule, and from a common, elastic rule, open to discussion, it develops into an inflexible, superior and absolute dogma

Legal doctrine, as we have seen, has conducted a long siege against the tendency to subordinate the rule of international law to the interest of the State, it has purified and strengthened this rule by liberating it progressively from dependence on national sovereignty and placing it above sovereignties as a dominant dogma

Political realities have not always followed this majestic rise of international law. They have often tried to abase it. Against this tendency, legal doctrine has reacted unanimously. And governmental action, conscious of the importance for international organisation of the hierarchic supremacy of the rule "*pacta sunt servanda*," has replied to certain attempts to overthrow it by a wise resistance and even by sanctions

Thus, for example, in 1870, the circular of Chancellor Gortschakoff attempted to make an exception to the principle of the intangibility of treaties by invoking the change from the conditions which had governed the conclusion of the Treaty of 1856. The rule "*pacta sunt servanda*" would thus have been overthrown by the exception "*omnis conventio intellegitur rebus sic stantibus*," or, as Lord Gravelle said in a note, "it is quite evident that the effect of such a doctrine, is to place the authority and the efficacy of treaties at the discretion of each of the Powers which have signed them. The result would be the entire destruction of treaties in their essence, for the sole purpose of treaties is to bind the Powers to one another."

This attempt to create an exception had as its only result the consolidation of the principle "*pacta sunt servanda*," by a rule of positive conventional law, the declaration of London of January 17, 1871. "It is an essential principle of International Law that no Power can free itself from the engagements of a treaty."

A second exception was attempted in 1914 by the German doctrine and practice of the right of necessity, which, in an effort to explain rather than to justify the violation of Belgian neutrality, claimed that the right of a State to self-preservation may justify the violation of a treaty, such violation being merely a legitimate exception to the rule "*pacta sunt servanda*."



conflicts in accordance with legal rules drawn up in advance and the methods which are based on broader considerations than purely legal principles.

There has thus developed in international life a veritable dualism in the methods for the peaceful solution of international conflicts and this dualism is not without its drawbacks.

In the first place, since there are two types of method, it has become necessary to try to separate their respective fields of application for it is not a matter of indifference which is to be employed, especially in view of the fact that, being based on different principles they differ in the validity and the bearing of their results. To this end, the attempt has been made to establish as a criterion the distinction between legal and political questions but it has not yet been possible to reach final or even satisfactory results.

The fact is that a fundamental error has been made. The belief has been entertained that only written law could introduce order into international life and that, consequently the reign of written law must be furthered to the greatest possible extent. But since at the same time, it was recognised that the written law was for the time being imperfect, it was not possible to confer exclusive jurisdiction on the Court of law. In according it, however a certain field of competence, the statesmen set up a dualism which has resulted in the uncertainty and confusion already referred to and which are extremely dangerous for the accomplishment of a constructive task.

It would have been wiser to proceed first of all to a thorough examination of the special nature of international life and of the rôle which law might be made to play in it giving full weight to the complexity of the one and of the imperfect character of the other. In view of these considerations the question should have been asked whether existing law could ensure unaided, the maintenance of international order or whether it would be necessary to call into play other factors as well.

It is necessary to take into consideration the difference between the relation of fact to law within each State and the corresponding relation in the international field. A simple transfer of the organic ideas and the legal principles which govern the life of the State is not enough. The situation is different, and so is the form in which are exercised the legislative, administrative and judicial functions. In the domestic sphere adequate means certainly exist since there exists here a sovereign justice whose will distinct from that of the interested parties creates the Law and adapts it in legal relations, in order to meet the requirements set up at certain moments, by the life of society. In the international sphere there is no adequate organ for the exercise of an analogous function.



In the case of domestic law, side by side with the rules defining the present spheres of power there exist others, providing for the modification of the former, that is to say, side by side with the static rules there exist other dynamic rules which make it possible to confine within normal limits the struggle between individuals for the increase of their respective power. When the law becomes fossilised or loses touch with the needs of daily life, the latent conflict which arises between life and law is ultimately solved either by the legislature creating new rules capable of satisfying the vital aspirations in question, or, in certain cases, by the courts accomplishing the necessary evolution through their application of the law. It is only when the conflict between the living forces and the legal rules is not solved satisfactorily and constantly by the legislature that a tension grows up between the two which may lead to a break in the application of the laws, forced into bankruptcy by an act of violence, that is to say, by revolution.

International law, on the contrary, contains no other rules than those which define the present spheres of power of the States, and even in this field, its rules cover only certain points. For, as we have already indicated, there exist whole areas which have not yet been materially regulated by international law. International law, then, is made up of rules which are predominantly static in character, and lacks the elements of legal dynamism.

International law is thus lacking in that other type of rule which governs changes in the distribution of power and which, consequently, makes possible the existence of normal ways in which the struggle for the increase and the modification of the spheres of power can take place. The absence of these rules deprives international law of the elasticity necessary for it to adapt itself even to the ordinary requirements of life, so that the opposition between existing law and the requirements of reality is much more frequent in international life. Consequently, since the structure of the legal rules now in force is not even capable of taking account of vital aspirations of a normal character, it becomes necessary to resort to the creation of new legal rules which, by modifying the former rules and giving due weight to new facts, will adapt the legal structure to life. In other words, by a process creative of legal rules we raise to a state of legal right a state of fact opposed to the former legal situation. In fact, international law, being fundamentally static, can only reflect a state of affairs at a given moment, and is at present unable to provide, in sufficient measure, the legal means of modifying that state of affairs. Thus any change in the state of affairs can find expression in the legal order only by the creation of new legal rules, or in other words by resort to the legislative function.

Once this is established, it is easy to see what system should be adopted for the peaceful settlement of international conflicts. We must reject at once all new proposals looking merely to the strengthening



of the court of law for as has already been stated, the latter can play only a secondary part in the international order

.. A radical modification of the ideas now in favour is therefore necessary. Far from assuming that the judicial solution is the only one and must therefore constitute the normal rule, we must start from the supposition that the court of law has at present, in the international order, only a relative value.

Law can be adapted to life only by the creation of new rules. International conflicts, especially those which endanger peace, constitute precisely a phenomenon which proves that it is urgently necessary to verify the adaptation of law to life with reference to a particular point. It is therefore evident that such conflicts can be solved only by the process of creating new rules.

For the settlement of all conflicts in general, it is essential that it be made obligatory to submit these conflicts to an organ which will take account of all the factors which play a decisive part in international life so that a careful weighing of all those factors, in the light of the requirements of the specific case, may lead to the settlement most acceptable to the parties and at the same time most favourable to the interests of the community because it contributes to the maintenance of peace.

Admitting the general competence of the organ in question (which we shall call for the moment the Court of Equity) to decide all international disputes it may happen that a particular conflict will be placed before it which is in reality of a strictly legal nature and which, in consequence, has no political importance. In such a case it will suffice that one of the parties raise this point in the form of an exception and that the other party recognise that the exception is justified, for the Court of Equity to declare itself incompetent and to refer the case to the Permanent Court of International Justice.

.. Since the Permanent Court of International Justice is limited to the provisions of the positive rules in force in settling the conflicts submitted to it the Court of Equity should take into account a different sort of factors.

.. The factors which should be taken into account are all those susceptible of exercising a decisive influence on the conflict. The Court of Equity should therefore be subject to no limitation in this matter in its search for a satisfactory solution.

.. In view of the allegations of the parties and the information obtained, the Court of Equity in complete liberty and independence and basing its action on the principles of equity should *propose* the proper solution. Bearing in mind that this solution must in principle imply



the creation of new rules, we must not lose sight of the way in which new international legal rules are at present created. The sole source for the creation of international law is at present the will of the States, manifested tacitly or formally. It is therefore proper to await the manifestation of this will as long as possible.

Such a manifestation of will (which would afford the parties a last opportunity to intervene directly in the affair, and would therefore greatly facilitate the establishment of the court of law with a general and obligatory character) should take place within a short period. Once this period had expired without positive result, the Court of Equity would once more examine the case (this phase might be called the review), carefully studying the reasons which had prevented the parties from accepting the proposed settlement. It would then pronounce the final sentence, which would forthwith be binding on the parties.

#### RESPECT OF INTERNATIONAL PLEDGES REVISION OF TREATIES AND INTERNATIONAL SITUATIONS

by GASPAR BAYÓN Y CHACÓN (*translation*)

Every legal norm, even in case it is created, not for a specifically limited period, but with the character of perpetual validity, is conditioned, as regards its field of application, by the subsistence of the circumstances which reigned at the moment of its creation, since any essential modification of those circumstances might render it inapplicable and unjust, its effects would be, then, opposed to, or at least different from those which were objectively natural at the moment of the agreements which gave birth to it. In this sense, the clause *rebus sic stantibus* is merely the legal expression, applicable to treaties, of the universal law of change. But it is sometimes maintained that the revision of international treaties, far from constituting an element in the regime of collective security, is a factor tending to disturb that security, for it produces a perpetual instability of the conventional norms which determine the whole body of relations among the various States, and those norms produce a movement completely opposed to the normality of changing situations, manifested in the maintenance of the *status quo*.

This affirmation is, in our opinion, radically inexact. International Law, like every body of rules, is subject to the necessary and adequate movement of life. The stability of international norms does not depend on the permanence with which they are applied, but on the existence of complete harmony between the regulating norms and the matters which they regulate. The acceptance and establishment of a procedure available for the revision of international treaties, not only



cannot harm collective security but actually constitutes without any doubt a method of ensuring it.

As subjects of a country which this problem does not concern we are able to take with regard to it, an absolutely disinterested and objective position. We are neither revisionists nor anti revisionists we firmly believe that, in order that collective security may be maintained at the present moment, it is absolutely indispensable to create an immediately applicable judicial procedure capable of giving an adequate hearing to the claims and aspirations of the States which consider themselves injured or oppressed by certain clauses of the treaties. It is only when a procedure shall have been created by means of which the discussion and solution of these problems can be initiated by one party that it will be possible to avoid and to repress, properly and with authority certain movements of exasperation on the part of the revisionist States.

It is necessary to create this practicable procedure for revision of international treaties in order that — just as, in domestic law constitutional texts tend to avoid *camps d'Etat* — this procedure may avoid, in the international sphere, the violation of treaties.

Article 19 of the Covenant of the League of Nations is absolutely ineffective for a whole series of reasons which we shall merely enumerate here since they are known to all: non-obligatory character, absence of the possibility of an action brought by order of one of the parties, absence of adequate rules of procedure, difficulties of application because of the requirement of a unanimous decision, absence of differentiation between reasons justifying abrogation and reasons justifying revision ..

### *Impossibility of utilising the Permanent Court of International Justice*

This impossibility is a consequence of the incompatibility which exists between the nature of the Court and that of the function which would have to be confided to it.

The very name of the Permanent Court of International Justice indicates clearly its real character: it is a judicial organ, whose function is to settle legal questions. But the function of declaring the necessity of revising a treaty or of deciding that it is no longer valid is not a strictly judicial function: it is primarily political.

### *Possibility of utilising the League of Nations*

By this process of successive elimination we are brought to consider the Geneva body as the only organ that can be utilised. Its political character, its organisation and its functioning already known and respected by everyone: the existence of a precept like Article 19 which



displays an immediate relation with the problem which we are examining, make the League of Nations the most appropriate organ, indeed the only one that can be utilised for this difficult task. In confiding this mission to the League, its powers in the matter ought to be greatly increased

But what organ, within the League, would be able to perform this task ?

*Difficulty of charging the Council of the League of Nations  
with the examination and settlement of problems relative to the revision  
and abrogation of treaties*

The Council of the League of Nations is merely a committee dominated by the Great Powers. Its very composition would tend to make the small States loth to entrust to it the settlement of a problem which, like the one which we are examining, might affect them so seriously.

To entrust to the Council of the League the mission of declaring the necessity of the revision of international treaties or the fact that they had ceased to be valid would be equivalent to transforming the Great Powers into supreme arbiters of international life. The respect of the small States could never be guaranteed within this organism. And without this preliminary guarantee, no formula for finding solutions of the sort we are defending could work.

*Possibility of entrusting this mission to the Assembly  
of the League of Nations*

Because of our desire to find such a guarantee for the small States, we are decidedly inclined in favour of the Assembly. All the members of the League are there represented, so that it would be easier to proceed to a thorough and objective examination of each particular case with reference to the problems of desuetude and of revision.

To be sure, the non-member States would still remain outside of the plan which we are attempting to outline, but as long as the international community preserves its present form, it will be impossible to do any better, and it will be sufficient if all the States belonging to the Geneva organisation can be induced to submit to the jurisdiction which we are studying.

*Necessity of suppressing the "liberum veto"*

According to Article 5 of the Covenant, the decisions of the Assembly must be reached unanimously. This requirement would make the functioning of the deliberative organ of the League totally ineffective. If the declaration of the necessity of revision or of the fact that a treaty has ceased to be valid must be submitted to the principle of unanimity,



if the opposition of a single State suffices to prevent such a declaration all the dispositions taken on this subject are useless and ineffective, and not a single step forward will have been taken along the road which it is necessary to follow

### *Necessity of converting the Assembly into a Parliament*

In order to preserve the existence of the international juridical community it will be necessary to substitute, for the consent of all, the general consent, "and, as an immediate consequence to replace the principle of unanimity by that of the majority

When the Assembly has thus been transformed into a sort of international Parliament, its decisions will lose their conventional aspect and will acquire the character of genuine laws or of international resolutions. In our opinion, this change ought to be made not only with reference to the problem which here concerns us, but with reference to all the activities of the Assembly. But since, in this preparatory conference, we must not attack a problem so general in character since we must speak of the concrete problem of collective security we shall defend the proposed transformation solely in connection with the revision and the desuetude of international treaties.

### *Injustice of the equality of vote*

Once the Assembly is transformed for the purposes indicated above into a juridical institution organised on a parliamentary basis, attention will be called to the inequality involved in allowing the same value to the vote of a Great Power and to that of the small States

Hence the necessity of establishing the plural vote, with due regard for the real importance of each nation in international life.

We admit that, in appearance, such a proposal seems anti-democratic, since it does not recognise the principle of equality but in practice if the international organs are to become instruments which can be utilised to govern the world, there is no other solution for the jurist than to take account of reality and to shape these instruments in its image. That is the only method of creating effective institutions.

Moreover the suppression of the requirement of unanimity cannot be regarded as a blow to the principle of equality since equality before the law — and this principle is so often repeated that it has become a veritable commonplace — consists in treating unequally those who are unequal in reality. And this real inequality is of greater force in the international field than in that of domestic law because it is by its nature more difficult to combat

Moreover even if the plural vote is to injure many States by diminishing their influence — more apparent than real — upon the course



of international destinies, it will be profitable for the international juridical community and consequently, in the end, for each of the States which make up that community

These declarations, made by a Spaniard, cannot be open to suspicion

*The problem of the distribution of the votes.*

We may choose between two methods

(a) Inequality in the number of representatives of the States in the Assembly, each representative being allowed one vote.

(b) Plural voting properly so-called, with one or more delegates from each country but with a fixed number of votes for each delegation, these votes to be cast *en bloc* and in the same sense. In view of the special character of representation in international affairs, the second method seems to us the better

*Problem of the determination of the plural votes*

This constitutes the most serious technical and political difficulty of our project. What rules are to be applied in distributing the votes within the Assembly?

In general, the following circumstances could be taken as bases for the distribution of votes

- (a) Territorial extent,
- (b) Absolute population,
- (c) Relative population,
- (d) Colonies,
- (e) Domestic production (agricultural situation, industrial situation),
- (f) Budgets,
- (g) International balance of payments

*Guarantees for the small States*

If reasons of equity favour the substitution of the majority vote for unanimity in regard to the decisions of the Assembly on the subject under discussion, we must also bear in mind the necessity of finding a formula which will permit minorities and States of the second rank to feel that they are sufficiently protected against the possibility of the treaties which affect them being declared obsolete or obligatorily subjected to revision solely and freely by the will of the Great Powers

The acceptance of the principle of the majority decision carries with it as an inevitable consequence the necessity of protecting minorities. Since our proposal implies turning the Assembly into a sort of Parliament, it is necessary to introduce into its rules of procedure rules equivalent to those which, in Parliaments, limit the absolute power of the parties which have triumphed in the elections



*Method which can be used for the protection of the small States*

When, during the Franco-Prussian War of 1870, the German Empire was formed and the Constitution was drawn up which was to guide its destinies until 1918 a serious difficulty arose. It concerned the procedure for the amendment of a constitutional text, a matter which was considerably complicated by the federal character of the new State. If for the amendment of the Constitution, a special guarantee was not given to the small States which, with Prussia, made up the Reich, those States would be at the mercy of Prussia, which, making use of its force, might provoke and impose a reform in the direction of centralisation, affecting perhaps the independence or even the existence of the other members of the Empire. But at the same time it was evidently necessary to give Prussia the assurance that no change could be carried out against her will, since, on the one hand, she constituted the most powerful State of the Empire and since, on the other hand, it was to her that was due the formation of this Empire, carried out by the clever policy of Prince Bismarck.

And it was none other than Bismarck who found the desired formula which is expressed in Article 78 of the Constitution. This article provides that "amendments to the Constitution shall be carried out in the form of laws. Any amendment against which 14 votes are cast in the Bundesrat shall be considered as rejected." Thus since Prussia had 17 votes in the Bundesrat no amendment could be carried through without her approval. But since the other States on their side had 41 votes, it was enough for some of them to vote together (for example Bavaria with her six votes and Saxony and Wurtemberg with four votes each) to prevent any amendment which the Prussian State might attempt to carry out to their prejudice.

We consider that this very clever formula could profitably be used to solve in the Assembly the problem created by the adoption of plural voting. And we consider it preferable to the requirement of a specified quorum because it is based on a negative attitude which is of paramount importance in questions of revision and of desuetude because of the resistance encountered, in the majority of cases by any attempt to modify the international *status quo*.

When the necessity of revision of a treaty or its abrogation because it has ceased to be valid has been declared, it will be necessary to establish a body of rules for determining what new rules (at what date and under what form) are to be substituted for the original rules which have been abrogated. In case revision is necessary the Assembly might in its decision specify the obligation to proceed to this revision within a given time and if within that time the treaty was not revised, a regime would be established to remain in force until the revision was carried out, similar to the one which we are about to outline in connection with the declaration that a treaty has ceased to be valid.



In the latter case, it would be necessary to dictate a series of provisional and transitory measures. The first of them could be specified by the decision itself. When the latter had been communicated to the interested States, they might adopt one of the following positions.

(a) They might decide forthwith to submit to stipulations previously in force or to a treaty drawn up and accepted immediately after communication of the decision or even before. From this moment the new rules would come into force, while the application of the provisional measures would cease.

(b) Upon communication of the decision, the States might undertake to proceed to the elaboration of a new treaty. In this case, as this task would in general be long and arduous, the Assembly would appoint a Commission, including States which had voted in the negative as well as States which had voted affirmatively, to draw up, with the collaboration of the parties, transitory rules to govern the relations between the States in matters affected by the declaration of abrogation. In this Commission the parties would have a voice but not a vote. The rules established would not require the approval of the Assembly unless they were not unanimously adopted.

In the absence of unanimity, appeal might be made to the Assembly against these rules if they were considered incompatible with the spirit of the decision or with the requirements of justice. The injured State might make such appeal, provided it were seconded by another State represented in the Assembly and which had voted in favour of abrogation, for it would thus be clear that the appeal was not directed against the decision but against its inexact and unjust application. If the appeal were received, a Commission would be appointed, distinct from the one already mentioned, its decisions would be subject to approval by the Assembly, if this approval were forthcoming, the decisions of the Commission would be definitely adopted.

(c) The interested States might refuse to undertake to draw up a treaty to replace that which had been declared abrogated. In this case, if the matter dealt with by the treaty did not affect the interests of the international juridical community, the League of Nations would abandon the affair. If that matter did affect those interests, a Commission would be instructed to draw up a draft treaty which, if approved by the Assembly, would be imposed upon the parties as a genuine international law. It would be the function of the Assembly to decide by a majority vote whether or not the abrogated treaty affected international interests. Until the treaty-law had been approved or until it was abrogated by the Assembly, the provisional measures provided by the decision would remain in force.

For the execution of the decisions of the Assembly one might employ the measures of coercion provided by the Covenant and other measures of a general character decided on beforehand.



## GENEVA SCHOOL OF INTERNATIONAL STUDIES

## PEACEFUL ADJUSTMENT OF INTERNATIONAL DIFFERENCES

by J. H. RICHARDSON

The establishment of an effective system for the peaceful adjustment of international differences is as important an element of a system of collective security as the organisation of force to restrain aggression. Changes in the *status quo* are inevitable, and they include territorial changes. Interpretation of treaties, revision of treaties, and appropriate arrangements to deal with new situations not covered by treaties are all involved. Rigidly to maintain existing relations is just as likely to cause friction in international affairs as enforcement of existing national legislation is to cause intense agitation in periods when new legislation is needed to remedy injustice. Yet at present much of the support for establishing a collective system to afford protection against aggression comes from States which desire in their own interests to maintain the *status quo* and which have shown little readiness to participate effectively in methods for adaptation and change. This attitude is illogical and, if persisted in, must inevitably lead to the collapse of any collective system which may be established. Action by a State which has failed to secure acceptance of its reasonable claims put forward in a spirit of compromise in relation to claims of other States can scarcely be regarded as aggression.

Some powerful States may prefer to rely upon their own strength for the protection of vital interests instead of accepting the findings of an international authority. This is especially likely where international conceptions of justice may be in conflict with vested interests which a State considers vital. But even great armaments offer no certain insurance for the security of these interests. Also for most States the most vital interest is the preservation of peace and this demands willingness to adjust differences by a process of concession and compromise.

States may also differ about the possibility of setting up an international tribunal sufficiently disinterested and impartial to give an unbiassed decision. They may also find difficulty in agreeing upon the authority which should appoint the tribunal. Nevertheless these difficulties must be overcome if an effective system of collective security is to be established. It is beyond the scope of this Memorandum to consider in detail the means by which these difficulties can be overcome but it is appropriate to mention that the plebiscite used so effectively in determining the future of the Saar Territory is a method which in favourable circumstances may lead to the solution of even difficult territorial questions. In some situations this method is obviously preferable to the submission of the issue to an international tribunal.



## B. — DISCUSSION

*The Second Study Meeting, held in the afternoon of June 4 at the Royal Institute of International Affairs with Mr. Allen W DULLES in the Chair, was devoted to the discussion of the prevention of war*

*After a brief word of explanation by the General Rapporteur, Professor CASSIN was called upon to speak*

Professor RENÉ CASSIN, Commission Française de Coordination des Hautes Etudes Internationales (*translation*)

The present discussion concerns the prevention of war. Most of the authors of memoranda and the speakers have stressed or will stress two aspects of the problem: the peaceful settlement of disputes and the question of the elimination of the causes of war, notably what Mr. Jessup has called "the adjustment of international conventions." The debate would not be complete, in my opinion, if we did not complete the diptych, if we did not add a panel to it — thus transforming it into a triptych — namely, the "respect of international agreements."

Certain of our colleagues have already clearly demonstrated that the more we wish to enter into the problem of the prevention of war, the more deeply we must penetrate into what I shall call the "regulation of the peaceful life of the nations." This regulation may be bilateral, but it is taking on more and more a collective aspect.

Consequently, if we really wish to prevent war, we must, sooner or later, ask ourselves how the respect of this bilateral or collective regulation is to be obtained.

I agree with those speakers who have rightly dwelt on the most terrible of the dangers that beset a collective organisation, namely the slowness with which the truth is discovered and the lack of energy with which the consequences of the discovery are drawn.

If we do not wish to remain in ignorance, we must have appropriate organs. Stress has been laid on the necessity of commissions of enquiry which, from time to time, would make recommendations about some international situation that appeared dangerous or about the practical application of a convention. In the field of international policy, we should bear in mind the Chairman's remarks about the Hydrographic Institute of Monaco, and what other speakers have told us about the Institute for the Detection of Infectious Diseases at Singapore. Every week, the sanitary bureaux throughout the world are informed of the number of cases of cholera or of plague, and of the number of infected ships that pass the Sunda Strait. Among these organs, it has been suggested that the temporary ones, the commissions of enquiry, should be made permanent. We shall not offer constructive suggestions, but shall give a general survey of what a real collective regime should be like.



There are three possible ways in which the execution of conventions may be supervised. There are first the judicial organs, among them the Permanent Court of International Justice, which *M. Leitmaier* expressed the regret not to see more frequently called upon to settle disputes. There are even conventions recognising the compulsory jurisdiction of the Permanent Court and, among the matters subject to that jurisdiction, there are, notably all facts of such a nature that if verified, they would constitute a violation of international engagements. I am sorry to see that this text is forgotten and that the States do not — at least in disputes which are not preponderantly political in character — have recourse more frequently to the Permanent Court of International Justice.

Besides the Permanent Court, there are the political organs, such as the Council of the League of Nations, which has jurisdiction by virtue of Article 11 of the Covenant. But the Council is not the only organ of political control. Every time that a political conflict becomes serious, it is desirable, in order that the world may be informed of the circumstances of the dispute, that the matter be laid before the Assembly of the League of Nations itself. It may be, indeed, that the Assembly will have to act with prudence, that it must not settle the matter publicly nor too rapidly. Similarly conciliation commissions can often exercise political supervision.

Finally — and I shall lay the greatest stress on this point — there are the organs of technical or administrative supervision. The more we develop the technique of the collective life, the more shall we diminish the likelihood of conflicts capable of leading to war. We already possess organs, but they have been made to function only in embryonic fashion. It would be worth while to develop them. For example it is certain that the technical commission for supervision of an international disarmament convention could play a part similar to that of the Singapore organisation and verify immediately in the financial field, in the matter of effectives, in the matter of the manufacture of war material anything which might be a threat to peace. That would at once dissuade nations planning to confront the collectivity with a *fait accompli* from going too far. For the control organ, itself informed, would warn world opinion in time. The establishment of the control would be a very effective means of preventing war.

I have taken this example of the reduction of armaments because it has been discussed in the past few years and because our General Rapporteur has played an important part in this field. But there are other examples as well.

In the field of moral disarmament agreements have been concluded regarding the education of the young; agreements relative to school text books. And a technical organ exists the International Commission for Intellectual Co-operation strengthened by the technical organ constituted by the national committees. Provision has been made



for certain consultations when a nation complains that another nation is spreading bellicose ideas among the young. I am sorry to note that this organism is not often enough called into play.

It is because we are unwilling to employ technical means that problems pile up and become serious political questions.

Thus, with reference to the prevention of war, the more frequently we catch controversial problems before they are hatched, the more promptly we prevent a nation — by the general watchfulness of which it shall feel itself the object, like the others, — from violating an international engagement, the more we shall have accomplished for collective security. In the word "security," in fact, there is not only the idea of protection against violent aggression, but also the idea that the word of other nations can be counted on.

In private law, we are familiar with the rule "*Pacta sunt servanda*", is it a rule which is purely individualistic, destined to serve the interests of the contracting parties? No. It is, on the contrary, a rule of general security, without which the relations between individuals would be almost impossible. In the international field, this rule should not always be regarded as a selfish rule made for the advantage of the State which is to-day the beneficiary of a treaty, for to-morrow it will perhaps be another State which invokes it.

The truth is that this rule is of basic importance for all social life. It was written into the statutes of the League of Nations, and not without reason.

Our work on the prevention of war could not fail to place in the foreground, along with the rules necessary to the evolution of unacceptable situations, the rules which must be followed in order that that evolution may be peaceful, in order that the nations may really be able to rely on one another when they conclude a convention, whether it be collective or only bilateral. It is these rules that I have wished to stress.

Professor DE GEOUFFRE DE LA PRADALLE, Commission Française de Coordination des Hautes Etudes Internationales (*translation*)

I should like to present some ideas in support of the general considerations which were developed in the memorandum presented by my colleague M. Le Fur and myself.

When a jurist wishes to grasp the problem of collective security in a concrete form, that is to say, in a text, he finds it in Article 10 of the Covenant of the League of Nations. Before the League of Nations existed, however, there were, in the society of States, methods by which security was sought, — two series of methods, in fact: on the one hand, the method of alliances, which served chiefly to ensure the protection of the strong State against other strong States, on the other hand, a system which has not yet been mentioned, but which was of real



importance, the system of neutrality which served to protect the weak against the strong

This last named system, it must be admitted, had its drawbacks: it was exceptional, and it placed the neutral States in a situation which their self-esteem found hard to bear since they were purely and simply protected, without ever being called upon to help in their turn those who had helped them. This was an obvious imperfection in the system and seemed in certain cases hardly conceivable

President Wilson realised this when, during the war he placed among his peace aims the extension to all the nations of the world of the regime of Belgium, not by resorting to the exceptional regime of neutrality but by placing them all under a common-law regime of reciprocal guarantee of territorial integrity. Under this plan, all the nations are on the same footing: each one is called upon to give the others the same assistance which it receives from them. It is this which, in a system of equality like the League of Nations, constitutes the originality and, I may say the force of Article 10 of the Covenant.

However hardly had this system of mutual collective guarantee been written into the Covenant when numerous attacks were launched against the Covenant, because of this very Article 10. That which gave this article its value was suddenly discovered to be a cause of weakness for it and all the attacks upon the League of Nations were based either upon the existence of this article or upon the terms in which it was drafted.

Unfortunately this article lent itself to these attacks in a certain measure and that for two reasons. The first reason — which casts its shadow upon the Covenant as a whole — is that, instead of being presented as a separate document standing quite alone the Covenant was tied up with the peace treaties. This is, for Article 10 a first cause of weakness. The guarantee which it placed on record seemed to be a selfish attempt on the part of the victors to ensure the results of the victory. We must face the facts and recognise that this cast a dark shadow upon Article 10.

There was another reason. It may be said that even if it had been written into a separate treaty quite apart from any war settlement Article 10 in itself was unsatisfactorily drafted. It seemed to mean that frontiers once fixed, were fixed for ever — that once a constituted State was admitted into a certain organisation it was destined to live eternally no matter what might happen to it whether its population increased or decreased, whether its economic, political and moral circumstances changed or remained the same whether its affinities were transformed, whether even its moral and social needs changed, it seemed that such as it was it must forever be.

There are historians among you. Is not Article 10 in its present text a sort of challenge thrown down by law to history? When



history receives such challenges, we know how it meets them. Such violations of the truth are certain to be avenged.

President Wilson is not responsible for this essential weakness of Article 10. He had intended that, in his League of Nations, the Assembly should be empowered to review territorial situations and to settle them by a certain majority. But in view of the circumstances of the moment, in view of the fact that the Covenant and its Article 10 were inserted in the treaties destined to end the war, it appeared to some at least of the Allies that it was impossible to adopt this Wilsonian proposal. And it was crossed off the list.

The result was the introduction of Article 19, with which you are familiar.

“The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international situations whose continuance might endanger the peace of the world.”

This is the palliative of Article 10, the method by which the safety-valve is opened at certain moments to prevent revolution from breaking out and to permit evolution to take place. It is clear that, in the present case — as M. Le Fur and I have said — revolution means war, to prevent it, therefore, evolutionary methods must exist. The difficulty — which is no longer anything but a technical difficulty — is to find them.

From the technical viewpoint, it is easy to work out a practicable system, to adapt it to the circumstances of the moment, beginning with very complicated and very slow methods and then perfecting these methods, making them more accessible and more rapid. But one thing must be said: the principle on which these methods are to be developed should be listed forthwith among the problems which jurists are to study, otherwise, there would result unduly great discouragement — and the thought of the possibility of such a discouragement is one more cause of war. The declaration that juridical technique is ready to perform its function must be made. It is with this in mind that we presented our conclusions.

There are established situations which must be revised, first, when they have been transformed, and secondly — I go as far as that — when it is demonstrated that they were not established by proper means. Peace can be made only on a legal basis, otherwise peace is only a confirmation of force. The only force worthy of respect is that which is based on law, that which is ready to give up, if genuine law requires it, the results which it has obtained.

However, a difficulty appears at this point — the most formidable of all: what is the rule of law? Security cannot exist without law, security develops out of order by the observance of the law, it is impossible to imagine security in a society which has no law. Law may be



reduced to a minimum, but it must nevertheless exist. Must international law then, be transformed?

It is thus that the General Rapporteur phrases the question. For my part, I should like to ask another question: has international law been formed? Before we undertake to transform it, it would be well to make sure that it exists.

Now at the present time, the rule of law is in a singularly negative state: the most that can be said is that there is a principle for the formation of law. And at this point we come face to face with the most formidable problem which international lawyers have to meet: we have not yet reached an understanding as to the binding character of the rule of law.

Some think that the principle of law lies in the will of the State, that there is no law except to the extent that the sovereign has accepted a limitation of his sovereignty. Others, on the contrary, consider that the basis of law lies outside of the will of the State: that it is impossible that it should be the subject of the law who determines the rule that is applied to him.

It thus becomes necessary that science take a stand and that it demonstrate that the basis of the law is exterior to the parties subject to that law. Then it will be possible to construct an international law which is sufficiently developed, which contains enough rules to make it possible to limit the acts of authority indispensable to the exercise of sovereignty.

I should like to say that we find here the moral bases of collective security. I have heard it said, in interesting speeches I have read in very learned memoranda, that if the States are under obligation to respect one another and to guarantee the mutual respect of their territorial integrity by collective security, it is because they correspond, in international society, to men in the limited society which is the State: who must respect one another's liberties. That is not enough. Unlike man, the State is only an artificial creation, a technical device: an institution, a means to an end: and this end is man. To return to the discussion which took place this morning, I wish to say that the basis of collective security is the maintenance of peace: that the basis of peace is the right of men to life, to liberty: to all that constitutes their existence as men, with the limitations of human personality.

That is what the law must protect, and collective security has value: has a basis: only on condition that it guarantee this protection of human rights. Thenceforth we possess a principle which makes it possible to proceed to the formation of States and, in case of need, to the formation and to the transformation of international law. We have a rule with a future: which permits the beginning of an evolution, and taking this rule as a starting-point, we can undertake the solution of the problems indicated by our Rapporteur: we have a principle for securing the development of law.

Who is to carry out this development? Is it to be — as we proposed



in our memorandum — an assembly like that of the League of Nations, using methods for the constraint of the minority which are to be found in persuasion by majority vote? Shall it be (I see here the only resource, the most flexible, in any case, at the beginning) the authority of the judge, applying to the specific case submitted to him, in the light of his consciousness of the evolution of political and juridical institutions and of his profound sense of equity, the measures which are necessary in order that law may progress by evolution and not by revolution? It is in the authority of jurisprudence that I put my greatest hope for the development of international law, because the judge — who can be set up only by the common will of the parties — applies to them a rule to which that will can offer no resistance, a rule to which the parties have promised beforehand to submit.

The law is then applied, in the diplomatic conference, by an authority which the States feel to be superior to themselves, which they cannot disavow, an authority distinct from their will, and by which is expressed the flexible dignity of a law which can claim that name only if those who are subject to its rules are not those who rise up against it as the creators not only of justice but of the rule.

It is in this direction that I would see the evolution of international law. Thus would be progressively obtained the basic conditions of collective security.

Professor JOSÉ GASCÓN Y MARÍN, Federación de Asociaciones Españolas de Estudios Internacionales (*translation*)

Our attention ought to be turned first of all to the causes of war. It is impossible to avoid war if we do not know the causes which may lead to it. I make no claim to offer here the peaceful solution for all international conflicts, I wish merely to say that the causes of war may be classified as political causes, economic causes, and social causes, to which must be added certain psychological states which cannot be neglected.

I take up first of all the economic causes. Was there not created, in 1919, side by side with the League of Nations, with the object of preventing war due to economic causes, a great international organism which performs the greatest services to mankind, which settles by legal means disputes between social classes, which tries to preserve social peace, the basis of political peace? Can we maintain the political situation of the world without settling the economic situation, without trying to establish normal peaceful relations, which will replace that economic warfare which is so murderous, even though we do not see the ruined lives? The economic victims must be spared, and, by settling this economic aspect of international disputes, we shall be doing useful work toward the prevention of war.

Similarly we must make an effort to influence ideas. M. Coppola spoke of illuminism, but this illuminism has sometimes preserved the



peace. For my part, as a Spaniard, I recall Vittoria, a precursor with Suarez and Grotius of international law who spoke of the duties of States. And Vittoria was not an idealist, he had studied these questions in an effort to solve the problems which Spain met with in real life: he was, as a Paris professor said, a jurist, a realist philosopher employing realistic methods to reveal those rights which are superior to those which arise out of the consent of the States.

In addition, then, to conventional law there are universal principles which govern the relations between nations. The justice or injustice of Governments does not flow from treaties: it is the moral atmosphere which exists in the international society which sets the standard for Governments.

Conventional international law is set down in treaties. If life is dynamic, we should not maintain peace as a *status quo* but we should preserve the *status quo* of the veritable peace which everyone wants.

The problem of the revision of treaties is also a timely one. In this connection I wish to thank the French delegation for having supported what was said by my colleague M. Bayón and also for recalling that we presented a memorandum intended to mark the difference which separates the solution of political conflicts and the solution of conflicts which are not of a purely legal character: the difference between arbitral procedure and that procedure for the settlement of disputes which has recourse not only to written law but makes use in international law of what already exists in domestic law.

We are in the country of equity. Jurists know what that word means in England. Would it not be possible to transfer the thing designated by this English legal term—equity—to the sphere of international relations?

In the domestic law of the States, we do not find the written law alone applied. Take for example that great institution, the French Conseil d'Etat: does it always judge according to written law? Yet the Government respects the decisions of this high jurisdiction. Thus administrative law has evolved, not under the influence and by the will of legislators, but because it has followed the path indicated by the equitable decisions rendered by the Conseil d'Etat.

If we find in domestic law principles which show that law can perfect itself without running counter to the truth of life: why not apply them in international matters? We are constantly divided: why not drop our scientific disputes? Very often, in our own countries we see great institutions judge *ex aequo et bono*: why not make use of the same procedure in the settlement of international disputes?

The solution proposed by the French delegation and by the Spanish delegation is not contrary to the general principles of law. It does not imply any blow to the rights of States: it merely takes into account peaceful procedures to which recourse may be had for judging with serenity without limiting oneself to the written law alone. We have



read, moreover, in certain reports, that the question to which a solution is being sought, even at the Permanent Court of International Justice, is not merely a judgment, but a peaceful construction of new rules of law, in the awards of the Court, are found the principles of existing law, but there is always found also something which signifies an evolution of law

LORD LYTTON, British Co-ordinating Committee for International Studies:

. The first object, of course, of such a system as we are discussing is that which is before us this afternoon, the Prevention of War and as the previous speakers have pointed out, an essential condition of that system is to provide an alternative for war. After all, the Covenant of the League of Nations did not abolish war any more than the writing of the Ten Commandments on tables of stone abolished crime. The causes for war still exist. The differences between nations will continue to exist in spite of the drafting of the Covenant.

Some nations are satisfied with their political position in the world to-day and wish to maintain that system unchanged. Others are dissatisfied and want to see their conditions altered. The conflict between two opposed points of view, when it reaches a certain point of intensity, makes war inevitable unless some alternative machinery is provided.

That, of course, was foreseen by the authors of the Covenant. They realised that the treaty, of which the Covenant itself formed part, could not remain intact for ever, that it must in the course of time be subject to modification; and they inserted in the Covenant Article XIX, in order to provide for peaceful change. But that Article to-day is very vague. The procedure under it is still undefined, and I think one of the most essential things to be accomplished towards the achievement of collective security is to develop that procedure under Article XIX, to develop it and to define it, and to provide through that means some alternative method of peaceful change. So important do I consider that subject that I sincerely hope it may form the basis of an entire conference at one of your future study meetings. I can think of no subject more useful to discuss, or the results of which discussion would prove more fruitful.<sup>1</sup>

Professor FREDE CASTBERG, Norwegian Institutions (*translation*)

One of the most important and also one of the most difficult questions in this matter is certainly how means can be found for carrying out the modification of existing situations by international methods. The question really concerns the possibility of having international institu-

<sup>1</sup> In accordance with the wish expressed by Lord Lytton, it was decided that the subject of the IX and Xth International Studies Conferences (1936-1937) would be the study of *Peaceful Change* (see above, p. XI).



tions capable of passing not only on legal conflicts but also on purely political conflicts i.e. on conflicts which arise in connection with demands in revision.

As our eminent General Rapporteur very rightly remarked yesterday was historically speaking have much more frequently been means of obtaining changes by force than means of maintaining the *status quo* and it is conflicts of interest of this sort which can most easily lead to wars in the future also.

Thus problem of the creation of effective international organs of revision naturally concerns those States which — rightly or wrongly — consider that they occupy a situation which is unfair unjust and perhaps unendurable. It must also necessarily concern the States against which demands in revision are addressed or may probably be formulated. It seems more prudent to seek general means of settlement for these conflicts than to allow time to pass until the day when specific demands in revision are presented in such a manner and backed by such material means of coercion, that the peace of the world shall be endangered.

Finally for all the countries which are not directly interested in these burning questions of European life — my country Norway is in this case — the interest which attaches to the discovery of means for the peaceful settlement of these questions is nevertheless evident. We are all in the same boat there is no country in the world whose safety and whose happiness does not depend more or less upon European peace.

The question may be discussed whether international tribunals will be the best fitted to carry out the revision of law and the specific reforms which might have to be considered. I had the honour at the Assembly of the League of Nations in 1928 during the discussion of the General Act to make a very radical proposal its essential feature was the giving to arbitral tribunals of free powers when they were called upon to settle non legal conflicts. I was not surprised, I must confess that this proposal was not accepted at that moment.

However the system of friendly compromise in the arbitration of non legal conflicts has been adopted in certain recent treaties. Spain has concluded treaties of this sort with Denmark and with Norway. If this system were modified and tempered in certain ways it might perhaps have a better chance of being accepted to-day than in 1928.

It must never be forgotten — and this is a point of the highest importance — that the means of reform constituted in the system of domestic law by ordinary legislation is lacking in international relations.

The historical precedents of domestic law must also be made to serve as examples the Roman praetor the English Chancellor and in modern law the tribunals for labour conflicts in certain countries.

The objection has been made — by M. Lischke, I think — that there is no legal conflict properly so called when a State utters claims which it does not think it can base upon an existing objective right.



In my opinion, this is to limit too narrowly, and to limit somewhat arbitrarily, the idea of the international legal conflict

There is no reason why a State should not make a claim based on what — in its opinion — should be the law. This is not an attempt to undermine the principle of the binding force of treaties. The parties must obey the treaties which they have signed until an arbitral tribunal or some other international institution has decided, so far as lies within its powers, to modify this or that clause of a treaty

Certainly it would be necessary to restrict within certain limits such powers of revision for international institutions, and everyone agrees that there are great difficulties to be faced in this connection. Nevertheless, it seems necessary that we succeed in organising international ways for the revision of existing situations, and for peaceful reform in international law. It may turn out that the peace of the world depends on it

Professor DAVID MITRANY, British Co-ordinating Committee for International Studies

I should like to take up in a little more detail certain points arising out of Lord Lytton's remarks with regard to the necessity of implementing Article XIX

But before doing that, I would ask permission in a few words to express my personal, and, I think, fairly general gratitude for the very remarkable memorandum which Professor Le Fur and Professor de La Pradelle have put before us <sup>1</sup>

We have been told repeatedly that it is impossible to get a French influential opinion to see the necessity of changes of this kind. I do not know whether it is true or not, but anyhow no one should say now that it is not possible to get a scientific point of view from the distinguished exponents of French opinion whom we have here with us. Such a memorandum is both a justification for a conference like ours and a model for what we ought to do

The reason why I so strongly feel that Lord Lytton's suggestion of the need of dealing with this problem of peaceful change is so essential is to my mind fairly obvious. There are to begin with certain reasons which have nothing to do necessarily with the scientific part, one thing which Professor de La Pradelle mentioned himself, the necessity of providing a psychological "detente" for those people who are dissatisfied with existing conditions

Lord Lytton also asks the very interesting question, why have so many attempts at dealing with collective security failed during the last fifteen years? I would make bold to suggest that one important reason is that you cannot work any kind of political institution without the continued support of public opinion. One reason has been that the

<sup>1</sup> See above, p. 195



common sense, which resides in the ordinary man in the street, has felt that it is difficult to use means provided in the Covenant to prevent the use of force, if you do not provide first alternative means for dealing with such claims by peaceful means.

That feeling of the masses has meant a kind of drag upon the willingness of the Government to undertake sanctions in such circumstances. Therefore, for both these reasons, I think a further study of the subject is very desirable.

I should like to take up one or two points raised in various memoranda submitted to us and especially those points which together represent the point of view which suggests that there is a danger a great danger in trying to substitute a dynamic procedure for the revision of treaty conditions because instead of strengthening the League foundations of the new international system, you are thereby setting in motion currents which are likely to undermine it.

It is the fault of historians that that point of view is still possible. They allowed the idea to grow up that revolutions were made always by radicals. I submit to you the suggestion that revolutions are always made by conservatives. The Bolshevik revolution was not made by Lenin and the Bolsheviks, but by the Tsar. I think you may apply the same thing to the Irish problem and so on.

The attempt to create a static condition has been made so often with results that we all know and it is really strange after all that historical experience that we should try now to establish a sort of static autocracy in international life.

I should like to take up very briefly two practical points mentioned in the memoranda put before us and try to suggest a proper reply to them. One point is that arising out of the fear of creating a disturbance of setting in motion disturbing factors. They say you are opening a door through which all sorts of claims will suddenly be rushed upon you, upon the League, and thereby create a state of chaotic pressure and demands in which any kind of co-operation will become impossible.

That point of view seems to me to overlook the more important part of this suggestion namely that when you give a particular country a right to raise a claim to a certain change you also impose upon it the obligation to substantiate that claim before the international forum.

You give it a right to raise the question. It does by no means follow that its claim will necessarily be granted. What does follow is that you also give a right to the other party to put its point of view in reply and to the international forum to examine the claim and see to what extent it is justified or not. Therefore far from providing as has been suggested in certain memoranda, a danger of allowing unjustified claims to be put forward, I suggest that that supposed danger contains a protection in itself by providing simultaneously the procedure by which the claim would have to be justified before an impartial forum.

The other point also of a practical kind raised in the memoranda



was that you will make permissible the demand for territorial changes, which are very difficult, dangerous and disturbing. There is no doubt that that kind of change is always disturbing and frequently dangerous.

But in the first place M. de La Pradelle has pointed out that you cannot detach the guarantee of Article X from the other procedure of that international system, that you have to take it into conjunction with the other conditions, especially Article XIX. It never was meant that the guarantee of integrity of the territory should be left to stand by itself, as a kind of absolute guarantee without the possibility of revision.

I should like to go farther and to maintain, in a somewhat paradoxical way that you cannot implement Article X except by providing the possibility of peaceful change, that the only way in which the guarantee of Article X will become real and lasting is by the establishment at the same time of a procedure of peaceful change. Territorial changes have never been asked simply that a particular State may collect territory, as a collector collects *objets d'art*. They have been demanded as a way of supplying certain social needs, and because there was no other means of getting those materials of the social life, they had to be taken by the addition of territory.

The aim of government surely is to satisfy social needs, whether material or spiritual, with the least possible disturbance to the whole social life, and without doing injustice to other groups who may have a different interest. A territorial change from that point of view can never be a satisfactory arrangement, because while it may and does satisfy one need, inevitably you are transferring simultaneously a whole collection, a whole bundle of things and conditions, and while you are solving one problem you are creating many others, as we know to our pain. You may satisfy the needs of minorities of cultural freedom, at the same time you are creating more problems in the economic field, and so on.

What I would suggest is that the only way to prevent the need for territorial change is to satisfy those needs, not by transferring the territory but by changing the conditions which run across the territory or along the frontier where the people are in need of certain changes.

International government will be satisfactory, I suggest, only where it will be possible by some means of decent procedure to satisfy claims of a social kind by direct means — regarding raw materials, population, food stuff and so on, — and not allowing conditions to develop where people are desperate enough and powerful enough to bring the change about wholesale, by the transfer of territory.

Professor DJUVARA, Rumanian Social Institute (*translation*)

The prevention of war constitutes a vast problem, and it has been agreed that we should limit ourselves so far as possible to that part of it which has to do with the revision of treaties. It is on this arid and very difficult subject that I wish to speak.



The masterly statement which we owe to the brilliant talent and to the great erudition of M. de La Pradelle has brought out clearly the elements of the problem. Our French colleague raised the question whether international law exists for if it did not exist, our problem itself would not arise. I think that I am in agreement with our colleague when I reply that international law does exist. It existed even before men were clearly conscious of its existence. It is an historical reality which was only recognised at a relatively late date, but it has always existed. Its evolution has gone on up to the present and it still tends to evolve.

However we must not give to law in general and to international law in particular the meaning which is habitually ascribed to it. When jurists speak of law they mean the written law but law is in reality something far more complex than that. Positive law denoting a reality much more vast than the written rule, is very closely related to a body of rational principles.

International law provides an especially good example of this fact and shows that positive law is a very complex thing. It is even less limited to written texts than other branches of law that is why it is far more flexible than domestic private law in general and even than internal public law.

This flexibility which should be grasped and realised, might be capable of providing solutions to the problems which the Conference is facing. Bearing it in mind, we ought to see whether it is really necessary to make any changes in the fundamental principles of present international law.

One fact is beyond dispute. Additional studies and the clearing up of doubtful points is necessary. They should take as their starting point the nature of present international law before facing the problem of revision proper. It would be interesting to see what might be done with the existing law.

I shall not go into this problem which is too complex to be solved out of hand. I shall approach the problem from the angle which has been indicated: the revision of international law.

This problem displays two aspects: should the revision be based on the texts on existing law — should it be approached, that is *de jure lata* — or should it be approached *de lege ferenda*?

As to the first aspect of the problem I refer to the view expressed in the report of the Rumanian Social Institute<sup>1</sup> namely that the problem of revision is considered in the Covenant of the League of Nations with certain restrictions.

The Covenant in fact makes solemn mention of the scrupulous respect of treaties by these words solemnly repeated, is meant primarily the sovereignty of the States. It was one of the aims of the

<sup>1</sup> See also p. 23.



Covenant to give the States that security without which no legal community is possible

I believe that the articles of the Covenant, in particular Article 19, can be interpreted in the light of the preparatory discussions as meaning that revision, under these articles, would not be particularly easy, I depart somewhat, on this point, from the view expressed in the memorandum of Messrs Le Fur and de la Pradelle. The habit has grown up of interpreting the Covenant by asserting what one would like to find in it. When a jurist interprets a text of positive law, he should know first of all what it contains.

Now if we study, in the preparatory discussion, the evolution of the text of Article 19, we discover that, after fruitless attempts to find a formula providing for territorial revision, a different formula was decided on which excludes territorial revision. But in that case, you may say, what is to happen ten years, or a hundred years hence? I confess that it is my impression that the authors of the Covenant were not legislating for eternity. 1919 was a grave moment in history. I was in Paris as a member of the Rumanian delegation to the Peace Conference, and I have not forgotten the hours that I lived through then. The moment was tragic, a turning-point in the history of mankind.

The authors of the Covenant, Lord Robert Cecil no less than the others, wished to establish European security, and were willing to wait and see what would happen afterward. It was impossible to settle details in advance, what was sought was the establishment of the newly-created situation, considered — rightly or wrongly — as a great step in the direction of justice, in comparison with the previous state of affairs. So much for the *lex lata*.

As to the problem *de lege ferenda*, it may be approached in two different ways, it may be regarded *sub specie aeternitatis* — we may consider what is to happen in ten years, twenty, fifty, or a hundred years, in the future generally. But it may also be considered, — and this is perhaps the realistic method which is proper in a truly scientific study — in the light of the political realities of the present, for law should cling to realities and not wander from them, on pain of becoming, not an instrument of peace, but an instrument of disturbance and perhaps even of war.

Let us look first at the problem of the revision of treaties regarded under its eternal aspect. It is evident that international law has a twofold nature, I have always held this view and I cannot affirm the contrary — that is to say, there is in international law, first of all, a conventional aspect, there are purely conventional rules, and then there is also an institutional aspect.

The international community is a legal institution which has always existed in a more or less embryonic form. It is trying to achieve organisation, but it already exists from the institutional standpoint.



there are rules which concern all the States, rules which concern the community as a whole, rules of public order to use our terminology and in these rules conventional texts are of little importance

If this is the case, let us see how the problem is set. The majority of the European States apart from the peace treaties which they have signed, have adhered to the Covenant of the League of Nations if the interpretation which I have given of Articles 10 and 19 of the Covenant is correct, these States in adhering to the Covenant, accepted the present territorial situation, unconstrained and on their own initiative. From the conventional standpoint, then, the problem cannot be raised.

It might, however be raised from the institutional standpoint the international community might find it desirable in the interests of a higher justice that certain treaties should be revised. That is possible it would have to be seen when such revision could take place but it is to be noted and recalled that it is always a question of justice, no matter what interests may be at stake whether those interests be economic or of any other nature whatsoever they must be considered in the light of justice. It is not enough that someone should say

"I want a certain thing" for the other to be obliged to give it to him it is not enough that an active propaganda, a well-organised movement should demand a piece of property from someone else with cries and threats it is necessary that the universal conscience judge that this demand is just. In other words a demand is not enough in itself to provoke or to raise the problem of the revision of treaties. That is the principle that must always be preserved and applied.

What would be then the procedure of revision? A distinction is ordinarily made common in international politics fairly frequent in international law between political and legal problems. I have had some experience with international law and also unfortunately with public and private law and especially with a synthesis of the various branches of law. I have come to the conclusion that there is no human activity whatever which is not dealt with by the law. There is no field of politics distinct from the field of law. To claim the contrary is to affirm the superiority of force to law. Let us then set aside this distinction which some people wish to set up in considering the procedure of treaty revision.

I shall not go into the details of this procedure and I pass from the theory of the revision of treaties viewed as a general problem *sub specie aeternitatis* to the problem as it appears here and now and especially to the problem as it concerns territories.

I have said, and I maintain, that a thing is to be considered otherwise than from the standpoint of justice and of reality now territory is not a mere part of a heritage it is not like an object which can be owned, in private law and which can be transferred from one owner to another. Territory for a State is the bodily form of the supreme



spiritual values of a nation, it is to the nation what the human body is to an individual. To ask for a part of the territory of another people is as though one individual were to ask another to cut off an arm.

That is why I do not believe that the mere consideration of the possible discouragement of a few men expressing demands can suffice to raise the problem of revision. The problem must be regarded from a loftier viewpoint, and, if we are to talk of a challenge to history, as M. de la Pradelle says, we must be careful not to try to turn aside the course of history and to bring back the injustices which it has ended.

The only true solution of the problem, the practical solution, lies in a different conception, namely in the progressive spiritualisation of boundaries. By simultaneous and convergent movements, it must be brought to pass that boundaries shall signify less and less in the international community an absolute separation between men, that they shall lose their present meaning. The problem of the revision of treaties by a more complete organisation of the legal community of States can then be solved much more easily.

*The meeting was adjourned after the address of Professor DJUVARA. The next meeting was held the following morning, June 5. The Chairman, Mr. Allen W. DULLES, called upon Professor JESSUP to speak.*

Professor P. JESSUP, Council on Foreign Relations, New York

I am struck by the fact that this subject of Prevention of War appears on our agenda under the heading of "Principles and methods of a system for the organization of Peace." I think it is with that in mind that Professor Bourquin in his summary in discussing this point refers to questions of revision of treaties and of international situations as really only important aspects of the same general problem of peaceful settlement which he has already discussed. In the same connection he refers later to the limitations imposed upon us in view of the fact that we are not a diplomatic assembly nor a committee of jurists charged with working out a system.

For the purpose of our agenda these limitations are entirely proper and quite necessary, but it seems to me we must not leave out of account the fact that the general subject of peaceful change is very much broader than those limitations would indicate.

That point was stressed by a number of speakers. Prof. Gascón y Marín, Prof. de la Pradelle, Lord Lytton, Dr. Mitrany and others all adverted to some of the broader problems involved in the question of change.

It seems to me the question of revision of treaties in its juridical aspects and in its political aspects is merely one of the very small aspects of the subject.



It might be that if we could avoid the term "revision," with its connotations which have developed a mental reaction in certain quarters which make it a difficult term to deal with, if we could abandon that and substitute the term "adjustment" that we might approach more nearly to a solution of our problem.

I was particularly glad that Professor Gascón y Marín stressed the economic aspect of the causes of war and the necessity of examining those problems, and pointed to the utility of examining certain precedents for adjustment within the national sphere. Similarly we have had a very interesting suggestion in regard to the utility of the analogy of the settlement of labour disputes within the national sphere, which recalls to my mind the fact that Mr. Bryan, Secretary of State of the United States, formulated his plans for Conciliation Treaties — which have subsequently been widely used as a model — on the basis of his experiences in the adjustment of labour disputes in the United States in the course of his earlier legal practice.

In the documentation for the Economic Conference of 1927 prepared by the League of Nations there is a great deal of interesting suggestion of the manner in which problems which have defied political adjustment by Governments have been settled by the private adjustments of the business interests concerned. Those documents afford practical example of methods of peaceful change through a device which has not, I think, been generally considered within the procedures that we have had in mind here.

All of this however to my mind merely suggests that this field of peaceful change, this whole question of adjustment, is very much broader than the particular aspects of it which fall within our agenda.

Coming back then to the specific points of our agenda, it seems to me that Professor Bourquin has pointed out unanswerably that in regard to the problems in which nations are in conflict as to a question of law or of legal rights the difficulties are not very great and we would not have much need for debate here as to the utility of arbitration and judicial settlement and similar processes.

I think the point is illustrated by a consideration of the two categories of wars which Sir Austen Chamberlain referred to in his opening address.<sup>1</sup> You will remember that he spoke of the accidental wars arising from some frontier question or matter of that kind. In regard to conflicts of that sort we have no difficulty I think, in agreeing that the usual procedure may be satisfactory as a method of preventing the outbreak of war.

Then Sir Austen spoke of deliberate wars in which case, he said the only way in which war could be prevented would be by opposing to that State which contemplated a deliberate war an overwhelming force, which would discourage it from embarking upon such a hazardous project.

<sup>1</sup> See above p. 33



It seems to me, however, that both in the case of the small accidental war and in the case of the deliberate war, in reality overwhelming force is the deterrent. In the case of the deliberate war, of which Sir Austen spoke, the application of the overwhelming force is immediate, whereas in the case of the accidental war, it is mediate, it goes through the channel of the League Council or some other body, but behind it is the force of those Powers speaking through the Council or others, which acts as a deterrent upon the outbreak of war.

I think therefore that we come down to this fact, that the prevention of war is achieved primarily and fundamentally by the threat of those means of repressing war which form the next topic upon our agenda, and to which we shall turn after the conclusion of this subject.

However, it seems to me also that all of these methods do not prevent war, and that we mislead ourselves very much if we speak of them entirely as methods of prevention of war, because it seems to me they are merely methods of postponing war, and we are led back again to considering the broader problem of the causes of war, the fundamental disputes and conflicts out of which war arises, and it is only in dealing with those fundamental causes that one can speak of preventing war and eliminating the causes of war, whereas by these methods of pressure and the threat of force, we are merely postponing a struggle from time to time.

We have had suggestions by Dr. Castberg and others that in regard to this broader field it may be possible to develop procedures which may be used for the prevention or, as I would say, for the postponement of war. We have had suggestions of Courts of Equity, of decisions by the Permanent Court of International Justice, *ex aequo et bono*, of Courts of Revision and similar devices.

In my opinion there is a fallacy in all such suggestions, in that when you are dealing with problems of this character, it is not the absence of law or the lack of clarity in law which makes it difficult for States to reach an adjustment, it is their unwillingness to entrust to any body of men, however competent, however impartial, the actual decision of the controversy in regard to which they are at issue.

Therefore I believe there is more value in proceeding with the consideration of another suggestion which has been laid before us, which is — and I would modify somewhat the suggestion as it has been made — that there should be some sort of international body comparable perhaps to the Mandates Commission, a permanent body of persons who should not in my opinion take a decision, or even perhaps make a recommendation, but before whom as a matter of usual, customary and normal procedure, it might become possible for States to lay facts relative to a situation in which they believe some revision or adjustment is necessary, very much as minority problems are now being dealt with.



I feel that in regard to the acceptance of treaties of compulsory arbitration, that process has been greatly facilitated by the fact that peoples have become accustomed to the idea that it is a perfectly normal procedure for their Governments to refer disputes to an international tribunal such as the Permanent Court of International Justice.

It was at a time when that was an unusual and abnormal procedure that Governments were unwilling to agree to make such submissions because public opinion at home frequently felt that it indicated a surrender of a fundamental position, whereas now it has become such a usual procedure that it may easily be resorted to by Governments.

So if it were possible to develop a normal and usual procedure of submission to some international commission, of facts bearing on situations in need of revision, it might in the course of years become possible to develop a practice which would contribute somewhat to the handling of these problems, or some of them by a method of international procedure.

However if one would tinge an optimistic view of the future development of some such procedure with the realistic appreciation of the problems immediately confronting us, it seems to me one must come down to the conclusion that the prevention of war in our time is extremely unlikely and that we must deal with procedures for the postponement of war, hoping that that postponement may be sufficiently long to give us some time for the development of what are fundamental attitudes and procedures which may lead to an ultimate prevention of war itself

Professor LUDWIK EHRLICH Central Committee of Polish Institutions of Political Science

It has not been often in my life that I have learnt so much in listening to a short speech — too short for my taste — as I did when I was listening to the speech of our distinguished colleague Professor Jessup

I would like to try to follow his example by not presenting to you any concrete definite point which I would defend, but simply by mentioning a few things which I think might be considered and studied in connection with the agenda, because I think that we are after all a Conference which is supposed to study to learn facts and think how to estimate its facts and what conclusions to draw from them.

My first remark would be this. It has been hinted at in a way by Prof. Jessup I would like to say once more a little more distinctly that the agenda of the sessions dealing with the Prevention of War comprises five points of which, however two have been omitted from our discussion, because, as our General Rapporteur remarks there have been no memoranda. Apparently these subjects were considered either too difficult or too easy to be dealt with in those memoranda



Those are the subjects which deal with the actual, the formal prevention of war, which deal with the actual prevention of the outbreak of war the points which should make it impossible for a war to break out, or at least to bring about an absolute repression in case war breaks out

Those are, first *Moyens d'assurer le maintien de la paix en cas de menace de guerre*, secondly, *Réduction et limitation des armements* and also in a certain way the third point *Règlement pacifique des différends internationaux*

What we heard yesterday related mainly to what I would call the material prevention of war, that is the removal of the causes which might produce war To my mind the biggest cause producing war is the fact that there are people, many people, who think that war is possible

You might say brigandage is brought about by certain conditions of crisis, by misery, by prohibition Of course, so long as the organization is such as to make the success of brigandage rather likely, so long are you likely to find some people who will go in for that occupation If you have an organization under which brigandage is repressed more swiftly, more efficiently, not even misery is likely to produce in that country the brigandage that exists under favourable conditions in another

It is the same with war I think one of the main causes of war is the mentality which makes it possible to think of war And I would not be afraid to say that as long as in a serious meeting of important scholars and statesmen it is possible to discuss the possibility of the outbreak of war, if, for instance, somebody is dissatisfied with some treaty or some other treaty, so long you really have not got to the stage where our mentality is such as to make war practically impossible

I think we must simply state the fact very plainly, that there are no excuses in the world, big or small, important or unimportant, for one State or two or three States, which would justify war, whether in the traditional sense with a declaration of war and declarations of neutrality and so on, or otherwise

We have, however, discussed so far only the problem of preventing war by removing the causes of war I am not quite sure that we have got along very far in this way, because of the truth expressed in that French proverb which applies also to wars and to international politics in general, and not only to the excellent French dinner tables. "*L'appétit vient en mangeant*" If one State comes and tells you, "You are going to have war if you do not satisfy this very vital requirement of ours," and then you do satisfy that requirement, thus removing the cause of war, it is very likely that the same State or some other State will come and say, "This is also a very vital requirement, if you do not do that, then, of course, we have to resort to war"

I think the thing to do in such a case is to treat such a State just as you would treat a man who comes up to you in the street, and says,



Legally speaking your watch is yours, but I like it very much you had better give it to me, as by doing so you will prevent murder."

Mr Chairman, I humbly submit to you that the agenda of to-day's discussion has been framed in a somewhat misleading way. There is discussion, for instance, of the means of ensuring the progress of law and the respect of justice, *justice en dehors de la guerre*. Personally I beg to claim that war is never a means of ensuring justice neither is it a way of ensuring the progress of law.

I would like to point out another thing. We discussed yesterday and there is also here something about it, means of ensuring the progress of law and we were talking about the fact of how the international order changes. It is in a state of evolution, *il évolue* and for that reason it is necessary to change the law. I submit that there is a certain confusion there because we did not talk yesterday about the change of the law. What we did talk about was a change of situations which exist in accordance with international law not a change in international law. I might put in a third remark, a rather professorial remark. To my mind the traditional division of rules of international law into treaty law and customary law is all wrong. Of course, there are some rules of international law which are accepted by treaty such as, for instance, the Declaration of Paris in 1856 the Kellogg Pact, and so on. But to me the most important part of international law is something which I would like to call by primarily an English name, which is applied also very wisely in the jurisprudence of the French Council of the State, as the common law i.e. law applied to concrete cases which means that there is a general rule and that from that general rule these and these conclusions follow for a certain set of facts. It is that which I would call in French, *La constatation des règles du droit international par les tribunaux internationaux*."

Now it seems to me that there is such a law. The question was asked yesterday is there such a law? There is. There is a common international law. There are also certain treaty rules but, of course you must not therefore say that every international treaty is international law that if you want to change the treaty between Spain and Denmark, that thereby you change international law. You simply change one agreement under international law. If you want to change a given treaty it does not mean that you thereby change the law. The law might even permit, and does permit, the conclusion of treaties which provide for the machinery of change, for instance in the way suggested yesterday it is perfectly all right for two States to say. Now we enter this treaty with the understanding that at the end of such and such a period this or that committee of two or three or five, or seven, will come together and see how much in that treaty may be changed. That is perfectly feasible.

I will just mention that Article XIV of the Covenant as I see it provides that the Assembly advise, from time to time that the time



has come when Members of the League of Nations should look over their agreements, look over international situations, for instance by calling an international conference, and in this way generally allay various difficulties which are there

We have talked about respect for international law, but what we really meant was changes, changes not of international law but of situations provided for in international law That may be very good, but let us call the right thing by the right name We are not talking of ways of changing international law, but we are talking of changing various situations which we do not like because they might produce war, with the proviso that you must not say that every situation which one State dislikes must therefore be subject to change because otherwise the State will go to war

We are talking about prevention of war rather than excuses for war What struck Professor Jessup in the speech of Sir Austen Chamberlain struck me the moment Sir Austen had delivered his first speech on that subject, which was a few months ago at the beginning of March in the House of Commons I thought he really hit upon a most vital distinction, the distinction between what he called accidental wars — which he seemed to consider easily preventible wars — and deliberate wars — which he thought could not be prevented It is exactly so far as the latter type of wars is concerned that some machinery must be set up to make such wars absolutely impossible because unprofitable

No State will go to war if it considers the war dangerous to itself, if it does not think it likely that it will gain by the war

In this connection, I would like to associate myself with one other remark of Professor Jessup's, which was about a body of men which could investigate various situations Not many hours ago our Chairman has suggested a possibility of something that was very similar, and he has very kindly allowed me to bring this forward in our joint names, because some years ago I myself had made a similar suggestion with regard to occupation of another State's territory That is, that there should be some kind of organization, some group of people to be called upon in case of need to go immediately, not within a week, perhaps not within forty-eight hours, but to go immediately to the spot of any possible international difficulty, and to investigate right there on the spot and, just as Professor Jessup quite independently suggested, report at once to public opinion, in order to avoid wrong impressions being given by the Press The Press can do very much to make difficulties bigger This organization would prevent false ideas spreading, would report immediately on the facts of any case which was supposed to require immediate attention, and thus help to bring about the right orientation of public opinion everywhere, just to make each one of the States feel which way public opinion will look upon the way the State has acted or has been acted against



*The Chairman* Mr ALLEN W DULLES, Council on Foreign Relations, New York

I wish to depart for one or two minutes from my position as Chairman of the meeting to say a word with regard to the suggestion which Professor Ehrlich has kindly ascribed to me but which is not original with either of us

I have been impressed with the fact that it is very difficult to catch up with public opinion.

We are putting at the disposition of war speed I would suggest that we try to put at the disposition of the prevention of war that same idea, that same force speed.

If when any threat of war arose, there could be an investigation on the spot immediately — and by immediately as Professor Ehrlich said, I do not mean a week later, I mean that that investigation should be as prompt as the investigation of the quickest reporter for a newspaper — that the report should then be circulated let us say to all members of the League, to all States parties to the Kellogg Pact, and that the States would undertake to permit the investigation and not in any sense to suppress the publication within their territory of that report, we might then have for publication quickly the facts impartially presented of a given situation.

This would only relate probably to the type of wars that have been discussed here, that Sir Austen Chamberlain mentioned, i.e. accidental wars

I know a case in the history of my own country where public opinion was inflamed and war resulted from what we all believe now was a false report of a given situation. That may happen again, as it happened in the past.

We have in Monaco now a Hydrographic Bureau. That Bureau sends round to the various States of the world reports as to derelicts reefs, uncharted dangers. That Bureau is supported by the nations of the world. It functions efficiently and has value. It seems to me much more dangerous to our civilization and to various nations are these threats of war much more dangerous than derelicts and why should not the same type of procedure be applied in these cases of threats to the peace?

Dr FRITZ BERGER, Berlin

I only want to make a very short remark on what Professor Ehrlich has said. I am not supposed to speak, as I am only here as a private guest. I only want to make one remark about a picture Professor Ehrlich has used. His picture seems to me to show that there is a danger on the one side of making things too simple and on the other side of making them too theoretical. I mean the picture of the man who



goes to another man, who has a watch, and says, "Give me your watch, it is so nice"

There are other situations in the world. For instance, one could imagine the case of a man who, having been reduced to a state of exhaustion, was lying wounded on the road-side. His watch has been taken away from him, and when he recovers he finds the man with his watch and says, "Oh, that is my watch. Give it back to me."

Or it may even happen that this man finds another who has two watches, the one formerly belonged to that man and the other belonged to the one who has taken it away. And it may be that the other man has no watch at all, and it is a very hard thing for him to be without a watch at all.

It may even be that there is a situation entirely different again, and here, of course, one would think of the Japanese situation in the Far East, the situation of a man who has never had a watch, but who is in urgent need of one, and another person has three or four watches and he wants to have one of them. All these situations, I think, must be taken into consideration in order to have the concrete aspect of the thing. As to the problem of accidental and deliberate wars, there have probably before 1919 been only accidental wars, and the first time we had deliberate wars is since the Great War, because only Article XVI of the Covenant has introduced the new method of deliberate war.

From quite a different angle I would come to an attitude very similar to the critical attitude of Professor Coppola when he spoke of new inventions as being inhuman. A deliberate war certainly is inhuman.

PROFESSOR SIR ALFRED ZIMMERN, Geneva School of International Studies

Peaceful change will never grow out of litigation, peaceful change will grow out of good feeling. When Solomon suggested that the baby should be cut in half, the suggestion may have been excellent, but neither litigant was very well satisfied.

People speak as though there had been no peaceful change since the war. The reason why they talk like that is because, where peaceful change has been achieved, it has been in an unsensational manner. There have been many instances of disputes being settled through the League, minor disputes, but there is one I would like to give of the technique of conciliation, affecting the two most dangerous subjects in international affairs — frontiers and religion. Within the last ten years, I think it was seven or eight years ago, we woke up one morning and found that a dispute of fifty years standing, which affected not one or two countries but a large body of opinion throughout the world, had been settled, and everybody was pleased. I am referring to the Lateran Treaty. I say nothing of its substance, but it was a wonderful bit of diplomatic technique. How was it done? Not by any elaborate procedure, sensational discussions in the newspapers or in the League



Assembly embittering feeling and arousing sentiments of prestige but by getting together behind the scenes.

I will give another example from before the war. You remember the immense pains Lord Salisbury took to keep the very mention of Heligoland out of the newspapers while he was negotiating with Germany in regard to that base.

The same is true of a matter which passed absolutely without notice in 1923 when the economic clauses of the Versailles Treaty ran out. The Council of the League had the power to prevent that and prolong the discriminations but because the matter was not discussed the concession was made by France, Great Britain and other countries and a much better atmosphere resulted, and a commercial treaty was rapidly negotiated between France and Germany.

What is the opposite method, that of President Wilson? The method of President Wilson, what we have in the Covenant, Article XIX, is a veriform appendix of President Wilson's original proposal. Here it is:

"The Contracting Powers unite in several guarantees to each other of their territorial integrity and political independence, subject, however to such territorial modifications, if any as may become necessary in the future by reason of changes in present racial conditions and aspirations, pursuant to the principle of self-determination and as shall also be regarded by three-fourths of the Delegates as necessary and proper for the welfare of the peoples concerned recognising also that all territorial changes involve equitable compensation and that the peace of the world is superior in importance and interest to questions of boundary.

That is in the House Draft. It is a doctrinaire notion of trying to apply the principle of self-determination. Then he realises the difficulties involved and has to bring back the old diplomacy by the back door by introducing the notion of compensation. I think it is fortunate that that section was cut out of Article X. It would never have worked. The lawyers here present could easily dilate upon the difficulties of interpretation resulting from trying to define the principle of self-determination.

I think it unfortunate, however that even the first part of the Article was retained, because it has associated the maintenance of peace far too much in people's minds with the problem of frontiers. The problem of frontiers is only one of many difficult problems in international relations and there is no reason why frontiers should have a guarantee in the Covenant specially to themselves apart from other matters.

There is another reason why I think it is unfortunate to discuss implementing Article XIX that is that you can never get sanctions for it. You drag an unfortunate State into the Assembly. You get an overwhelming majority against it. Then you try and enforce that and you have against you a passive resister. It is hard enough to get the peoples of the world to unite together against an aggressor. It



is much harder to get them to unite together in enforcing a judgment against a passive resister

Thus I would suggest that we ought to put *first things first* and when we have made quite sure we can deal with the aggressor, then will be the time to devise methods of dealing with the passive resister. You will say, that leaves the whole problem unsolved. What about these countries with grievances?

Here I would reply to the representative from Germany, you have a perfectly simple remedy—come into conference, tell the world your grievances, put them before the public opinion of the world. To expect that you are going to be allowed to use one article of the Covenant under a special procedure without using the general system of conference is really asking a *privilegium*.

The great mistake of Japan was that she did not before 1931 put her grievances before the League. It is not entirely her fault. It is partly the fault of the Western Powers who, when the Covenant was drafted, refused to insert the article for racial equality, and thus gave them a sense of inferiority which prevented them from readily resorting to the League. But that is the procedure they should have adopted, and which I would suggest should be adopted by the country to which our guest belongs.

Let us know what these grievances are, then perhaps the public opinion of the world may be brought to bear on them.

I was very much interested in the suggestion made by Dr. Jessup, that there might be set up a special body, before which such grievances as those of Japan might be brought. The first thing that occurred to me was that the Assembly already is such a body, and that States ought to be far more ready than they have been in the past to put their difficulties frankly to the Assembly or Council.

Take one question, the Austrian question. People speak as though Austria was forbidden to join with Germany. Not at all. The Treaty merely says that the Council must give its consent—but the matter has never been argued before the Council. If in the years after Locarno the matter had been openly argued before the Council, and European public opinion had been told what the arguments for and against were, I think at that time when the atmosphere was relatively good, some general understanding might have been reached.

However, I think there might be room for such a body as Dr. Jessup suggests, but I think it is much more likely to grow out of some *ad hoc* body than by setting up a new body in a vacuum so to speak.

In the Institute of Pacific Relations there already exists for the Far East an influential body which frankly discusses grievances and problems and brings together representatives of all the countries round the Pacific Ocean. In that way unofficial bodies are able to act as peace-makers.

May I make a remark also about the very interesting suggestion made by yourself, Mr. Chairman. You suggest that persons equipped with



the speed and skill of reporters should be sent to the place where trouble breaks out. But you then went on to suggest that their reports should be circulated to the Governments signatories of the Kellogg Pact. Why should they not go straight in to all the signatories collected together in one place? Why should not, simultaneously with the action of your reporters, one of the Governments concerned summon a meeting instantly of the signatories to the Kellogg Pact, so that all the Governments concerned in the maintenance of peace might deliberate together not with any obligation to act in any particular way but to consult together on the situation in the light of the best available information. In that way you would not only get rapid information, but rapid mobilisation of public opinion, ready for any action the Governments might think it wise to take.

There is only one last thing I want to say and that is that I think this question of Article XIX is being brought up at the wrong time and in the wrong way. It is not brought up because there are a number of small countries whose grievances do not secure proper recognition. It is brought up because there are certain powerful countries who are inclined to make us feel that if they are not allowed to have their own way they will find their way in some other manner. The plain word to apply to that is blackmail, and the answer to that is that there exists a general association of the States for the discussion of those matters.

Let the countries concerned join together in that body. Let peace become assured. Let us cultivate the sense of mutual responsibility for the repression of the crime of violence. When we have the atmosphere of peace, when we have the beginning of a rule of law in the world, then I am certain that the techniques necessary in order to change the law will develop very much more rapidly than might seem likely from the disturbed history of the past fifteen years.

Dr FRITZ BEABER, Berlin

I am afraid I am not in accordance with the facts brought forward by Professor Zimmern, first because as far as I remember the two States which brought Article XIX to the remembrance of the League of Nations were first a South American weak State, which wanted a revision of its frontiers, and, second, a territorially large but politically very weak State, namely China. I do not remember that a big State has brought matters under Article XIX to the League of Nations, or has brought forward complaints about the present procedure of Article XIX except one Great Power which is not Germany.

A second point is why did they not make their grievances known. You referred already to one State which made its grievance known, Japan. Japan demanded racial equality in 1919. She wanted it for emigration's sake which is very closely connected with the development of Japan's politics especially since 1931.



As far as Germany is concerned, we have made our grievances known. We tried it in 1919, but at that time we were under the silence rule. We have had to wait seven years before we could bring our case to the knowledge of the League. Herr Stresemann laid down very definite conditions for Germany's entry into the League, and although these conditions were not fulfilled, we still joined, because people said to us, "First join the League and we will talk about it." We have talked for seven years between 1926 and 1933, and have made definite complaints especially in the field of disarmament, and these complaints have been very modest.

Then if you come to the present situation, it seems to me that we have not omitted to make our grievances known. We even submitted the question of Austria, but you will remember there was an utterance of a very weighty character by a State, saying that the continuance of Germany's ideas about Austria would mean war in Europe.

Lastly, I would express my entire agreement with Prof. Zimmern about the meaning and about the value of Article XIX. I utterly agree with him in that and I must endorse his reasons.

I still might add that the two main causes for European unrest in the time after the war — on the one side the situation on the Rhine, and on the other side the situation on the Vistula — have been solved not under Article XIX, but by concessions from the side of Germany, the one in the Locarno Agreement, and the other in the agreement with Poland.

Dr. GEORG SCHWARZENBERGER, New Commonwealth Institute

I think the point we must emphasise in a Study Conference is the strong interdependence between the ideas of collective security and the ideas of collective justice. If we do so, we approach the question from a practical point of view, and I would point out also that these two must be established concurrently or not at all. I think it is futile to believe that any State we may call a revisionist State will join a system of collective security that does not provide as well for international justice or any *status quo* Power, if this system does not provide also for collective security. So I think we come to the conclusion that, either we shall realise collective justice and collective security together, or not at all.

Apart from the practical point of view — that one or the other group of States will not accept such a limited solution — there are deeper reasons for this interdependence.

Any study of the organisation of peace must begin with the question: What was the function of war before the Kellogg Pact? Here I must say I cannot agree with Professor Ehrlich, who expressed the opinion that it was not the function of war in those times to realise justice by anarchical and primitive methods. I think the States tried to realise



justice by the unilateral method of war and if we want to renounce war it is no use doing so merely on paper. We must organise peace in a way that does provide by better methods on a higher plane, for the realisation of justice.

I think we are justified in this interpretation of the Kellogg Pact if we consider the situation of the revisionist States. If the revisionist States have only renounced war for nothing but the maintenance of the *status quo* then they have undertaken a burden that is much heavier than the situation of the *status quo* Powers. But we are justified in saying that all the States whether *status quo* Powers or revisionist States have renounced war in the interest of the community as a whole. Therefore we must refer not only to the moral but also to the legal obligation contained in Article 2 of the Kellogg Pact, that the States are bound to settle all disputes by pacific methods only.

Then we come to the question of how we can settle these disputes. Some of the speakers pronounced themselves yesterday in favour of an international equity tribunal, but I think it is premature at this stage of the Conference to discuss questions of organisation and procedure in detail.

But it seems to me important that we should agree about the principles and the methods that have to be applied in such disputes. For if we leave this matter to the political discretion of States we shall never come to any solution. There will always be States that want too much, and States that do not want to make concessions. In this too lies my answer to Professor Zimmern that it is quite good to talk about these problems, but when will the talking end? When will there be a solution, and how will you arrive at a solution if you have no measure to adopt, if you do not find principles according to which you can settle these disputes?

Therefore we have to make up our minds whether we are going to settle these disputes by the application of international law. Or are we going to leave such disputes to political discretion? I think we must settle them as pointed out yesterday by the application of the principles of equity and must be clear as to whether or not we want to apply such principles.

We have had to face the same problem in the municipal sphere, and there again it was not found impossible to apply such general rules.

But you may ask: What are these equity principles? I should like to give you the answer that is contained in the award of the International Court of Arbitration on the Norwegian shipping claims, where the principles of equity were defined as "the principles of international justice common to all civilised nations applied to a particular case."

*At the conclusion of the speech by Dr. GEORG SCHWARZENBERGER the meeting rose. On the afternoon of June 6th however in the course of the general discussion that was held at the end of the sixth Study Session of the*



*Conference, Professor RICHARDSON returned to the problem of the prevention of war by the revision of certain international situations. The passage in his remarks dealing with this problem ran as follows*

Professor RICHARDSON, Geneva School of International Studies

Certain conclusions of value in considering relations between countries can, I think, be drawn from experience of industrial relations within countries. In the first place, the interpretation of existing agreements usually offers little difficulty, and this suggests that many international agreements may readily be interpreted by arbitration procedure.

Another interesting feature is that agreements about industrial conditions are usually of short duration and give opportunity for the regular adaptation of wages and hours to changes in economic circumstances. Except in the commercial field such processes of adaptation have as yet had little application in international relations. Various difficulties will be encountered in endeavouring to develop a system of adaptation in international relations, but such changes are necessary in a world which is in process of continuous evolution. In such circumstances, processes of conciliation must be continually operating, not only to maintain the *status quo* but also to facilitate adaptation. Otherwise, there must be a gradual concentration of forces within defined boundaries and limits until they become so pent up that an explosion takes place. The recent practices of restrictions upon trade, restrictions upon movements of people, and restrictions upon movements of capital seem to be resulting in the accumulation of forces which may lead to an explosion in the future. In industrial relations, frequent adaptation to changing conditions plays a considerable part in preserving industrial peace.

A distinction must be drawn between the possibilities of industrial conflict in a country which applies the method of compulsory arbitration and those where the system of voluntary conciliation is maintained. Where the system is voluntary, conciliation is the only means by which disputes are settled, whereas in countries which have compulsory arbitration the possibilities of maintaining peace in industry depend partly upon the force of authority exerted by the Government. In the last resort, the authority of the Government may be used to coerce an industrial group within the country, but the preservation of industrial peace depends still more upon the processes of conciliation which the Government is able to encourage. I wish, therefore, to emphasise the necessity for the development of machinery of peaceful change which includes systems of conciliation and arbitration and also of collective security.



## § 2. — REDUCTION AND LIMITATION OF ARMAMENTS MORAL DISARMAMENT

### REDUCTION AND LIMITATION OF ARMAMENTS

*Although it figured on the agenda for the Conference the question of the reduction and limitation of armaments was not discussed in the course of the General Study Conference of London. As we cannot to our keen regret reproduce here at length the very interesting memoranda on this question which were presented to the Conference we shall merely publish a very rapid analysis of them referring the reader for further information to the original documents.*

#### FRANCE

(Commission française  
de Coordination des Hautes Etudes Internationales)

### THE PREVENTIVE ORGANISATION OF SECURITY BY THE SANCTION OF THE CONVENTION RELATIVE TO ARMAMENTS

by R. GUILLIEN

*The author undertakes first to demonstrate the prime importance of seeking Security by means of sanctions which are other than war and which can therefore be given effect before any aggression is begun. Those here discussed are preventive sanctions applicable in case of violation of the international convention relative to armaments which the author for the purposes of his theoretical study assumes as concluded. But this convention cannot be a factor of peace unless it is observed. In the second part of his study entitled "Organisation of the sanction of the convention relative to armaments" the author takes up successively the three problems raised by the practical application of the principle thus established: how to look for infractions; how to determine them; application of sanctions to them. The author concludes in the following words:*

*Let the material proofs of disarmament be sought then after an organ has been created capable of performing so important a task. But it must also and especially be borne in mind that there is no material disarmament without moral disarmament nor conversely moral rearmament without material rearmament. A convention concerned solely with the physical armament of the States would be simply a military weapon. A nation which did not collaborate sincerely and without reservation in a moderate but effective sanction for the Convention on moral armament would merely have protected the preparation of an air and chemical war without mercy.*

*See also pp. 66 a study by MM. SCHELLE and CASSIN. French Opinion and Collective Security.*



## GREAT BRITAIN

(British Co-ordinating Committee for International Studies)

*See above, p 91, a study by W ARNOLD FORSTER, Prevention of War and Disarmament*

## POLAND

(Central Committee of Polish Institutions for Political Science)

THE INTERNATIONALISATION OF CIVIL AVIATION FROM THE VIEWPOINT  
OF COLLECTIVE SECURITY

by KAZIMIERZ GRZYBOWSKI

*The author stresses the growing menace to international security constituted by the development of aviation. Bilateral or regional pacts cannot suffice to parry this danger permanently, a collective effort is necessary.*

*After reviewing the history of the plans for the internationalisation of civil aviation, the author considers the problem successively from the political and economic viewpoint and from the legal viewpoint. He then studies the question of the control of civil aviation with a view to preventing its transformation for military purposes.*

*All these points would necessitate the conclusion of a new air convention, as well as the extension of the powers of the International Commission on Air Navigation, created by the 1919 Convention.*

THE PROBLEM OF CONTROL AND THE WORK OF THE DISARMAMENT  
CONFERENCE

by S E NAHLIK

*From the legal viewpoint as well as from the psychological viewpoint, the control to be applied to the international obligations which would arise out of the Conference for the Reduction and Limitation of Armaments constitutes the keystone of the whole system of collective security.*

*The author retraces the evolution of the problem of control during the operations of the Disarmament Conference. The problem was briefly as follows: what was to be the organisation, the powers, the methods of activity of the Permanent Disarmament Commission which was to be given the responsibility for making effective the provisions of the future convention?*

*Finally, the author studies the three problems which arose during the Conference, and in connection with which it was necessary to take up once more the question of control, although it was not directly linked to them: the prohibition of chemical warfare, the regulation of the manufacture and sale of arms, and the publication of military budgets.*



## MORAL DISARMAMENT

## CANADA

(Canadian Institute of International Affairs)

## NOTES ON MORAL DISARMAMENT

by W. H. FIFE

In a democracy and indeed in any modern State, war is only possible when the majority of the nation is in that emotional temper in which the true perspective of national interest is violently distorted. This is a temper of unreasoned animosity and suspicion, inflamed by feelings of prestige and destiny and a blind desire to defend "national rights" without considering the rights or wrongs of other nations. Its source is those Freudian obsessions to which General Smuts referred in his speech at Chatham House on the 12th November 1934 — the fear complex and the inferiority complex. Its issue is an obstinate belief in conspiracy treachery espionage and the wickedness of other people. Its other name is panic.

The ultimate problem is therefore psychological, because it is concerned with a temper determined not by facts or principles but by opinion formed not by process of reason but by unconscious motives of vanity prejudice and fear.

It is a difficult task to change long-established habits of thought feeling and action. The obstacles include not only the inveterate human distaste for thinking but also genuine idealisms and some reasonable fears. But human motives and conduct can ultimately be modified by persistent argument and by dragging to light the hidden and unconscious causes.

What are the means to be used? Not intensive propaganda. Advertising may effect sales but it is a poor instrument for changing opinion. The direct appeal of circulars, pamphlets and obviously inspired articles too often elicits a hostile reaction. The appeal must be direct and must be used with tact and watchful persistence. For its use many and various means may be found as circumstances change. Two may be specified here.

I. Obviously the maximum of hope lies in influence upon the young. That will increase with the general spread of sane ideas of international relations. It will increase more rapidly and more widely if we can instil such ideas into the rising generation of teachers. The one way to do that is to cultivate in them during their term of training a mastering respect for truth and a desire to cultivate respect for truth in their pupils. What is needed is to find facts to face them and to draw sure inferences from them. That is an attitude which it is the purpose of all schools



and universities to foster, but if any special appeal is made by those who are aiming at moral disarmament, it can be most usefully directed to the training colleges and the authorities which control them

II More important means are the tact, persistence and courage of the advocates of "peace-politics" Those who have seen the light must neither keep it under a bushel nor allow it to become a bore They must seize every opportunity as it arises of nailing fallacies to the counter and presenting their own idea of international relations in forms attractive to their readers or auditors Perhaps the richest opportunities are informal — the chances which through indolence or cowardice we so often miss in conversation It is worth while to write briefly to newspapers calling attention to the false or out-of-date assumptions which so easily flow from the tired pens of journalists, and politely to contradict timid and therefore bloodthirsty old women both in dowagers' drawing-rooms and in military clubs Thus to seize every passing opportunity is more irksome but also far more effective than floods of printed propaganda and platform oratory

It is encouraging to note how many factors are already at work towards moral disarmament The abhorrence of war and its sequel of loss to all who have anything to lose, the "new patriotism" which combines with national affections a sense of loyalty to a wider order, just as Canadians are patriots for city, for province and for Dominion, the international solidarity of Labour, which is beginning to hamper the flight of "canards" which must precede war-feeling, the growth of enlightened self-interest among industrialists who recognise that war, so far from securing markets, destroys the system of international trade on which markets depend, and at long last even the Churches are beginning to preach peace

There is therefore good hope of slow but steady progress towards moral disarmament League of Nations Societies exist to focus and organize good will, Institutes of International Affairs promote the search for truth The value of such societies is very great But success ultimately depends on the willingness of all men and women of good will to study, think, speak, write, at sacrifice of leisure, convenience, friends, and if the demand should ever come, at sacrifice of personal liberty and life Peace has her challenges no less than war

## DENMARK

(Institute of History and Economics)

### THE CAUSES OF WAR AND MORAL DISARMAMENT

by GEORG COHN (*translation*)

. There is one consideration which is bound to make us a little sceptical in regard to this whole question of the "causes of war," namely, the fact that war has existed for thousands of years, at periods



and under conditions in which economic and social factors did not by any means play the same part as in our day and had, in any event, nothing to do with the origin of war. It is because these social and economic problems are so overwhelmingly important in the public discussions of our time and underly the whole of domestic policy that we tend to hold them responsible likewise for international conflicts and to assume that they are also causes of the danger of war.

However, at other periods, quite different reasons were advanced for the necessity of making war for example, at the time of the Crusades or of the Thirty Years War. And when the native tribes of Central Africa or of Australia fight with one another almost daily this state of affairs has little to do with their social or economic circumstances. It is a "manner of being," a general conviction that things happen so because they have always happened so. The young men are trained as warriors they identify their honour and the very object of their lives with war and with the capacities which it gives them an opportunity to display.

On the other hand, one often sees powerful social and economic interests combat one another and come to terms with one another within the boundaries of a State, without anyone dreaming of solving these problems by an appeal to arms.

There is reason to suppose that many of the alleged 'causes of war' are in reality merely facts which are seized upon when one wishes to make war in order to provide a relatively reasonable explanation of an object which is quite absurd, but which, in itself, would not necessarily lead to an armed conflict. In the case of war also alleged offences to honour play a very large rôle. In other words an effective struggle against war should occupy ground much broader and in part quite different from that on which it has thus far been carried on. It may be that the tendency to war and to murder are innate in mankind. In that case considering the frightful consequences entailed in the carrying out of this tendency a much more energetic action should be undertaken with a view to suppressing it and rooting it out from childhood. But it is also possible that we have here an unhealthy perversion of tendencies which are in themselves healthy and useful and that it may therefore be possible to combat the madness of war also by medical means. Aside from this pedagogical and medical struggle against the war spirit, it is possible, finally to consider combating it by means of repressive measures of an international character against incitement to war either by parallel national legislation in the different countries or by the establishment of penal dispositions of an international order against States which do not repress with sufficient effectiveness the incitement to war on their own territory. A few brief observations will be found below concerning some of the chief characteristics of these three methods of combating warlike tendencies the medical method, the pedagogical method and the penal method.



The medical method proceeds from the idea that war is a collective and contagious disease. We are dealing here with difficult and obscure problems, which have not heretofore been subjected to scientific study, chiefly because the necessary experimental facts have never yet been methodically collected and examined. The problem is not only whether the individual who takes part in war and in the murder of other men is suffering from a pathological condition of mental disorder, but also — and this is a still more delicate question — whether it is necessary to take into consideration the possibility of a pathological condition affecting the social milieu, the moral life of the society to which the belligerent belongs. This last question, in particular, confronts us with problems with which medical science has not hitherto dealt at all, namely, what might be called mental disease of a social or collective character, and its treatment.

As a first step in this direction might perhaps be proposed the setting up, on the initiative of the International Institute of Intellectual Co-operation, of a Commission composed of neurologists and sociologists familiar with international problems, who might bring together a body of facts destined to furnish a basis for the medical treatment of the individual and collective war psychosis and, on this basis, to outline certain guiding principles in view of the further study of the question.

As to the pedagogical method, there exists already on this point a large body of information relative to moral disarmament, to the efforts which have been made to disseminate among young people a knowledge of the League of Nations and of its aims, to educational films, to the struggle against incitement to war by the Press, etc. What concerns us here, then, is, in the first place, to systematise and to develop this activity, which ought to be directed with a much greater degree of precision and energy than has been the case hitherto. The League of Nations should officially stigmatise the States which deliberately influence their young people in a warlike sense, as enemies of the international Society of States, it should exclude them from its membership and inflict on them penalties comparable, for example, with the provisions contained in Part XIII of the Treaty of Versailles relative to sanctions of an economic nature (Art. 419).

On this point, reference may be made in particular to the Memorandum of the Polish Government on moral disarmament, dated September 23, 1931 (C 602 M 240 1931 IX). This interesting document indicates, in its main outlines, the task which should be undertaken.

The Conference for the Reduction and Limitation of Armaments, acting through its Committee on Moral Disarmament, thoroughly studied this problem and drew up in 1933 a draft convention on this subject.

The contracting parties undertake to make use of their powers or



of their influence in order that at all stages, including the training of the teachers instruction may be so conceived as to inspire mutual respect among the peoples and to call attention to their interdependence. In addition, they undertake to make every effort to see to it that the persons in charge of the work of education, and the text books used accept these principles to encourage the use of the cinema and of radio broadcasting with a view to developing the spirit of goodwill among the nations and, incidentally to use their influence to avoid the presentation of films, the broadcasting of programmes or the organisation of spectacles whose evident intention is to wound the legitimate sentiments of other countries. Finally they undertake to facilitate co-operation in the field of moral disarmament, both in administrative circles and in other circles which, in general, work for peace.

These rules however can only be considered as a beginning as a minimum programme, since an effective struggle against war requires a much more far reaching action in this same direction.

The question of the measures of penal law capable of combating propaganda and incitement to war is likewise dealt with in the Polish Memorandum of 1931 mentioned above. It rightly stresses the following point of view:

In national legislation, it is always necessary to bring individual liberties into harmony with social interest: these liberties must submit to certain restrictions in order to safeguard the superior interests of society. Heretofore, apart from some rare exceptions, it was considered that the social interest to which were subordinated individual liberties coincided with the interest of the various social groups existing within the framework of the nation. But there exists outside of that framework, a society of superior rank, namely international society.

Why then, should not national legislations take into consideration the interests of this society side by side with those of the national societies?

This problem was raised at the first international Conference on the Unification of Penal Law in 1927. In addition, legislative programmes in this field have been undertaken in three countries: Brazil, Rumania and Poland. The draft penal codes in these three countries expressly provide that any person guilty of inciting to war shall be punished by imprisonment. The Brazilian draft goes even farther in this direction, by providing for the punishment of persons who stir up popular agitation with a view to exercising pressure on the Government in favour of war during the course of diplomatic negotiations with a foreign country and, more generally of any person who endeavours to disturb international relations.

In connection with the work carried on by the Committee on Moral Disarmament of the Conference for the Reduction and Limitation of Armaments M. Pella drew up a preliminary draft, based on his



memorandum, in which are specified a list of acts considered dangerous for international security, and which the States should undertake to punish within their territories. It is possible to go much farther in this direction, and it should certainly be done. Experience proves that agitation, whether national or otherwise, which, without directly aiming at war, has as its purpose, in general, to appeal to the bad instincts of the masses, to their tendencies to violence and to murder, is dangerous to international security and leads sooner or later to war. It is indeed hardly possible to specify exactly and in all cases the particular acts in view of which no agitation ought to be permitted, since those acts may be of very different sorts. It should be enough that one or more other States feel themselves menaced by these acts and that an impartial tribunal, such as, for example, the Council of the League of Nations, the Permanent Court of International Justice, or another tribunal specially created for this purpose find the complaint justified.

In this connection, there should be established, in addition, an international arrangement with a view to the application of sanctions against the State which does not bow before an injunction addressed to it to put an effective stop to a dangerous agitation of this type within its territory.



of their influence in order that at all stages, including the training of the teachers instruction may be so conceived as to inspire mutual respect among the peoples and to call attention to their interdependence. In addition, they undertake to make every effort to see to it that the persons in charge of the work of education, and the text books used accept these principles to encourage the use of the cinema and of radio broadcasting with a view to developing the spirit of goodwill among the nations and, incidentally to use their influence to avoid the presentation of films the broadcasting of programmes or the organisation of spectacles whose evident intention is to wound the legitimate sentiments of other countries. Finally they undertake to facilitate co-operation in the field of moral disarmament, both in administrative circles and in other circles which, in general, work for peace.

These rules, however can only be considered as a beginning, as a minimum programme, since an effective struggle against war requires a much more far reaching action in this same direction.

The question of the measures of penal law capable of combating propaganda and incitement to war is likewise dealt with in the Polish Memorandum of 1931 mentioned above. It rightly stresses the following point of view

In national legislation, it is always necessary to bring individual liberties into harmony with social interest these liberties must submit to certain restrictions in order to safeguard the superior interests of society. Heretofore apart from some rare exceptions, it was considered that the social interest to which were subordinated individual liberties coincided with the interest of the various social groups existing within the framework of the nation. But there exists outside of that framework, a society of superior rank, namely international society.

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## CHAPTER IV

### THE REPRESSION OF WAR







# § 1. — PROHIBITION OF RECOURSE TO FORCE. DETERMINATION OF THE AGGRESSOR.

## A. — MEMORANDA

### CANADA

(Canadian Institute of International Affairs)

#### COLLECTIVE SECURITY

*Rapporteur* ALAN B. PLAUNT

A fundamental principle of a system of collective security must be that every use, or threat of use, of force by one State against another is illegal. Consequently no force should be recognised except force employed by the competent international body in the interests of general security, exceptions may be made in the case of acts which are deemed to be acts of self-defence. But the State which takes any such measures of self-defence must do so at its own risk, the question is not thereby settled, whether the plea of self-defence is or is not justified is a matter of subsequent adjudication by the competent international body.

The reservations of Great Britain and the United States to the Kellogg Pacts illustrate the difficulty of getting States to give up the "right" to decide what is, or is not self-defence. One of the main weaknesses of the Kellogg Pact arises out of these loose reservations. It is to be noted that the British reservations were not concurred in by Canada.

The organ authorised to determine the aggressor must obviously be an international organ. It is contrary to all principles of a collective system or of law that the individual State itself decides as to who has broken the peace or who is responsible for a threat to peace. The present League Council is not yet a competent authority, and will not be so until it includes all the great Powers and until the League system has been revised to include provision for treaty revision, and the modification of general and objective principles of law. Otherwise any automatic test of aggression will merely serve to rigidify even further the international economic and political structure.

Until the League Council includes all the great Powers the best procedure for determining the aggressor and for deciding on action in case of threat of aggression would seem to be that outlined in Part I, Articles 1-3, of the amended text of the British Draft Disarmament Convention, which reads as follows



*Article 1*

In the event of a breach or threat of breach of the Pact of Paris, either the Council or Assembly of the League of Nations, or one of the parties to the present Convention who are not Members of the League of Nations, may propose immediate consultation between the Council or Assembly and any of the said parties to the present Convention."

*Article 2*

It shall be the object of such consultation, (a) in the event of a threat of a breach of the Pact, to exchange views for the purpose of preserving the peace and averting a conflict (b) in the event of a breach of the Pact to use good offices for the restoration of peace and (c) in the event that it proves impossible thus to restore peace, then to determine which party or parties to the dispute are to be held responsible."

*Article 3*

The provisions of the above article do not in any way prejudice the rights and obligations of the Members of the League, nor conflict with nor limit the powers and duties of the Assembly and Council under the Covenant."

With regard to a practicable definition of aggression, that embodied in the Litvinoff Convention for the definition of aggression and incorporated in 12 non-aggression pacts to date appears to us a satisfactory definition. The Roosevelt Declaration<sup>1</sup> of December 1933 embodies the same basic principle as the Litvinoff Convention, but is not sufficiently comprehensive or definite to be of practical use. It is merely the statement of a principle.

## FRANCE

(Commission française de Coordination  
des Hautes Etudes Internationales)

## DEFINITION OF THE AGGRESSOR

by A. CAMILLE JORDAN

*The author after recalling the origins of the agreements signed in London, in July 1933 on the basis of the definition of the aggressor proposed by the U S S R. and commented upon in the report submitted to the Disarmament Conference by M. POLITIS, continues as follows*

Each of these conventions includes in fact *three texts* which constitute its component parts first the Act proper relative to the definition of the aggressor next the Politis Report of May 24, 1933 to which Article 1

<sup>1</sup> Roosevelt declaration on test of aggression, December 23 1933 "A simple declaration that no nation will permit any of its armed forces to cross its own borders into the territory of another nation. Such an act would be regarded by humanity as an act of aggression, and as an act therefore that would call for condemnation by humanity"



of the principal Act expressly refers, finally, a protocol annexed to Article 2, which specifies certain circumstances which can never justify an aggression.

*The definition* The essence of the Pact is contained in this second Article. It enumerates, restrictively, *five facts*, each of which constitutes by itself an act of aggression. They are

- (1) The declaration of war
- (2) The invasion by armed forces, even without declaration of war, of the territory of another State, the Politis Report indicates that "by territory is to be understood the territory over which a State exercises in fact its authority."
- (3) The attack upon the ships or aircraft of another State
- (4) The naval blockade of the coasts or ports
- (5) Support given to armed bands which shall have invaded the territory of another State, or refusal to put a stop to all protection in their favour

When one of these facts is established, there will be *automatically* against its author a *presumption of aggression*.

This presumption will no longer be a simple presumption, as in the case of the Geneva Protocol, but *irrefutable, juris et de jure*. The proof of the contrary can in no case be admitted.

In order to make the significance of this definition perfectly clear, Article 3 provides "that no political, military, economic or other consideration shall be accepted as an excuse for or justification of the aggression defined by Article 2", and the annex enumerates under two heads, non-restrictively and by way of example, a certain number of circumstances which cannot in any case serve as excuse. They are relative respectively to the internal situation of a State (A) and to its international conduct (B), it may be noted, in particular, that the pretext of frontier incidents, which has been so often invoked in the past, can no longer serve henceforth.

Again, the excuse of provocation is abandoned along with the expression "unprovoked act of aggression," which was introduced in the Locarno Agreements. The Politis Report is very explicit on this point (par 32) "Either provocation constitutes one of the acts of aggression defined in Article 1 (Article 2 of the London Pact), in that case, the State which has been victim of such an act can obviously reply by acts of the same nature, and there is no difficulty. Or the provocation consists in a violation of international law or in unfriendly attitudes of Governments or of public opinion, but no act of aggression is committed. In this case, the provocation cannot be considered an excuse."

*Reservations* The Pact is very firm, then, in its measures against all recourse to violence. It rightly recognises, however, that there shall be presumption of aggression only "under reserve of the agreements in force between the parties in conflict." It may be noted that this formula



did not appear in the Litvinoff proposals. It refers, in the first place, to the Covenant of the League of Nations, and in particular to Article 16. It is clear that a State committing one of the five specified acts on the recommendation of the League of Nations could not be considered an aggressor. Furthermore, this addition was necessary so as not to interfere with action which might be undertaken by reason of an infraction of Section III of the Treaty of Versailles (left bank of the Rhine) and of the Treaty of Locarno. Finally the reservation makes it possible to reconcile the Eastern Pact with the Convention of September 26, 1931, relative to the means of preventing war and thus gives a certain elasticity to the system adopted at London.

Further, it is quite clear that the chronological order of the facts is a decisive element: the State which is the first to be guilty of a prohibited act is the aggressor; the victim of an aggression is freed from all restrictions.

The Politis Report next examines the question whether a third State could commit against the aggressor State one of the forbidden acts without being itself considered an aggressor. The Committee, considering that "the Act defining the aggressor is conceived as an extension of the Pact of Paris" (par. 32) refers to the principle formulated in the preamble to that Pact, namely "that any signatory Power which should henceforth seek to develop its national interests by resort to war ought to be deprived of the benefit of the present treaty." In this particular case, all the uncertainty remains: the automatic definition of the aggressor no longer holds good. In order to determine whether or not there has been an aggression, it will be necessary to examine the spirit which has animated the third State, and what are the psychological reasons for its intervention. This is unquestionably a loop-hole in the system, which may however have the salutary effect of intimidating the first possible aggressor, which would risk losing the advantage of the definition in its relations with all its co-signatories.

*Effects on possible sanctions.* Thus the Conventions of London condemn the forcible methods hitherto frequently employed as sanctions for the repression of infractions of international law. What the signatories wished to obtain was, in the words of M. Politis, "that the idea of peace be recognised as having a sort of priority." It is of paramount importance that peace be maintained, whatever may be the wrongs endured by the State which has been attacked. The responsibility for the dispute and the responsibility for the aggression are two essentially distinct things. Domestic law does not allow the individual to take the law into his own hands by violent means. The same principle should be followed in the international field.

But it is clearly specified that the High Contracting Powers agree to recognise that the present protocol must never serve to justify the violations of international law which might be implied in the circum-



stances " mentioned as not admissible as excuses. The Soviet proposal did not contain this last clause. M Litvinoff had enumerated very completely all the possible ways in which a State might violate international law and considerations of simple humanity, he mentioned extreme cases, especially in paragraph B for example, (a) infraction of international treaties, (e) repudiation of debts, and especially (par A-c) dangers which might threaten the life or property of foreigners, and (par B-g) violation of the recognised privileges of the official representatives of another State. It is clear that the spirit which had animated the author of these clauses could not be that of the Politis Committee. It is as a vigorous reaction against that tendency that the enumeration of examples was abridged and relegated to an annexed protocol and that the last paragraph of that protocol was inserted, to make it quite clear that the convention was by no means destined to facilitate infractions of international law, much less to ensure their impunity. And the Politis Report indicates (para 31) that the victim of ill-treatment will have at his disposal " possible recourse to methods of peaceful settlement and, if necessary to means of pressure such as the breaking off of diplomatic, economic and other relations, which do not constitute forcible measures " It may, however, be useful to organise other sanctions sequestration of property, denunciation of and publicity for illegal acts, for example, this will be another goal to reach.

### *Value of this definition Criticisms*

Having thus studied the contents of the London Agreements, let us now consider what is the value of the definition adopted, what are the criticisms which have been made of it, and whether these criticisms are with or without foundation.

(1) In a thesis defended in 1933 before the Law Faculty of Montpellier, Captain Vignol, who at the time knew only the Soviet proposal of M Litvinoff, declared that he did not see the usefulness of a definition of aggression, because the Covenant of the League of Nations could be shown to imply a very satisfactory criterion the violation of a frontier. M Vignol bases his demonstration on the interpretation of Article 10 of the Covenant by M Scialoja, which he considers as the most restrictive. " Article 10 may be said to deal with the possessory action (defence of the present state of things against violence, independently of considerations of the justice of that state), while the petitory action (legal action for the recognition of a just demand) is dealt with by the following articles " Therefore, writes M Vignol, " If Article 10 guarantees States against all disturbance in possession, it must forbid invasion, for if it defended exclusively definite occupation, Article 10 would give rise to a petitory action and not to a possessory action ".

The reasoning is ingenious, but it seems difficult to admit the conclusion. In the field of positive law, the only rules which are binding



on States are those which they have recognised, either expressly or tacitly. As there is no international legislator in the present state of the law, recognition is the condition *sine qua non* for the existence of a rule of international law binding on the States. Now the States have not interpreted in this sense the Covenant of the League of Nations. In reality, as we have seen, in spite of appearances, the Covenant does not identify aggression with the initiative of hostilities; there remain cases in which, under certain conditions, the invasion of the territory of another State is permitted; moreover the concept of aggression remains very vague, and this is enough to justify the necessity of a definition. The Italo-Greek conflict of 1923 made this clear: the Committee of jurists consulted by the Council of the League of Nations on the question whether the occupation of Corfu by Italy was a violation of the Covenant replied: *Measures of coercion* which are not intended as acts of war *may* or may not be *conciliable* with the terms of Articles 12 to 15 of the Covenant."<sup>1</sup>

(2) Another objection can be made to the definition of London, or more exactly to its generalisation. Its application, though simple in Europe, where territorial sovereignties are clearly marked off, is much more difficult in certain parts of the world in which exceptional legal situations exist: thus in Manchuria there is a marked partition of sovereignty. How is it possible to apply, for example, the ordinary notion of the respect of territorial integrity in regions where the maintenance of order is ensured by foreign forces? The only new fact in Manchuria, at the time when recent events led to the intervention of the League of Nations, was the magnitude of the operations which had been undertaken for the railroad zone had never been strictly defined. This fact explains why it was possible for protests to be made against the report which was unanimously adopted by the Assembly of the League of Nations in February 1933. It will therefore be desirable, when States which find themselves in situations of this sort wish to adopt the principles of London, that they determine in advance the exact extent of their sovereignty. Once this is done, there is nothing to hinder the adoption of a strict definition.<sup>2</sup>

(3) Another argument, of a strategic order, can be invoked against such a definition. There are said to be cases in which the needs of legitimate defence would necessitate the commission of one of the enumerated acts which might even be the only means for the weaker party to defend itself against the stronger. This is as we have seen, the chief reason which prevented the authors of the Treaty of mutual assistance from drawing up a definition. It is, however, easy to reply

*Official Journal of the League of Nations*, 1924, pp. 524 to 526.

The Polish Report, moreover, contemplates such situations when, in its paragraph 23, it examines the second of the facts which constitute aggression: the invasion of the territory of a State. "By territory is here to be understood the territory over which the State exercises *in fact* its authority."



that this convention, like all conventions, evidently suppresses certain facilities, the only point which counts is whether the sacrifice agreed to is small in comparison with the advantages obtained. Moreover, the General Staffs are merely instruments of their Governments and have only to bow to the orders which they receive concerning questions of a political nature, and to adapt their ideas to those orders. Thus, in 1914, the withdrawal of ten kilometres which Viviani forced the French Commander-in-chief to execute was certainly a mistake from the standpoint of strategy, but it has seemed to some people that it was a judicious political operation. Thus, again, a German Government conscious of its international duties would not have allowed the application of the Schlieffen Plan, in violation of Belgian neutrality, in spite of the strategic advantages of that plan.

(4) Finally, objections have been made on principle to any definition of aggression. Sir Austen Chamberlain, in refusing the signature of England to the Geneva Protocol, declared "I remain opposed to this attempt to define the aggressor, because I think that it will be a trap for the innocent and a signpost for the guilty." Mr Kellogg wrote on February 27, 1928, to M. Claudel "If a renunciation of war as an instrument of national policy were accompanied by definitions of the word aggressor and by exceptions and reservations stipulating cases in which nations would be justified in resorting to war, its effect would be greatly weakened and its positive value as a guaranty of peace would perhaps be destroyed."

Even within the Committee on questions concerning security, certain members would have liked to leave the definition of the facts to an international tribunal. If this tribunal had doubts, there would be recourse to arbitration or else the imposition of an armistice, violation of which would constitute aggression. Mr Eden in particular upheld the traditional position of England, declaring in the course of the discussion of May 25, 1933, that if the criterion suggested by M. Politis were adopted, the determination of the aggressor in a particular case would depend in the future not on the merits of the question, for the judging of which it was indispensable to know the historical background, but on the cleverness displayed by one or the other party in impelling or inciting the adversary to accomplish one of the acts indicated in the proposed definition.

This objection, which is the gravest, was also the most clearly foreseen. It arises out of the difference in underlying principle between the Anglo-Saxon jurisprudence and that of the continent. The former is more flexible, adapting itself to each particular case, while the latter is more rigid. But, as M. Politis pointed out during the discussion at Geneva, the combination of these two conceptions is capable of producing excellent results. witness the Covenant of the League of Nations. If the rigid system was adopted here, because of its incontestable advantages over the flexible system in the interest of peace and as a guaranty



of security it is nevertheless tempered by the earlier agreements referred to by the qualifying clause of Article 2 of the Eastern Pact. The organ charged with determining the aggressor by the application of the rules of London can in fact, if it is the League of Nations take into account the powers it possesses by virtue of Article 11 and, if the application of the Convention of 1931 is concerned, it can take into account the special rules contained in that convention. Thus it can, if in doubt, conduct an enquiry impose an armistice on the parties if hostilities have begun, or better still, offer or even impose arbitration to decide who is really responsible.

The system adopted at London preserves then, a certain elasticity while at the same time establishing a very precise definition of aggression, without which the complete uncertainty which had previously prevailed regarding this elementary notion of international law would still subsist. One or two historical examples will suffice to illustrate the veritable state of anarchy which existed formerly

By the agreements of July 1902, Italy promised to remain neutral in case of war declared by France upon direct provocation and Prinetti, questioned by Barrère, replied that Fashoda, the publication of the Ems dispatches, the refusal of King William to receive M. Benedetti, the Schnaebele incident were direct provocations.<sup>1</sup> This is to say that the war of 1870 was for France a war of legitimate defence.

Still more characteristic is the discussion of the Interpretative Report of the American Senate on the Briand-Kellogg Pact. Senator Borah maintained that the Spanish-American War of 1898 had been a war of legitimate defence, and that each nation reserved the right to employ force to protect its nationals, if the lives of the latter were in danger in a foreign country.<sup>2</sup>

The failure of the Treaty of Mutual Assistance under these circumstances is understandable it was due in large part to the absence of an acceptable definition of aggression, since the States were unwilling to expose themselves to the risk of an arbitrary determination of the aggressor

It is for this reason that the definition adopted July 3 1933 appears as a long step forward. In the first place, in the words of the Politis Report it renders considerably more authoritative the prohibition of recourse to force, by making it possible for public opinion and the other States to judge with greater certainty whether or not this prohibition has been respected and upon whom the responsibilities rest at the moment when an incident occurs in international relations. In the second place, it makes the designation of the aggressor by an international organism much easier and reduces the danger that an attempt may be made for various reasons of policy to protect or excuse the

French Diplomatic Documents, Second series, T II, p 373 telegram of June 29 1902 from Barrère to Delcassé

<sup>1</sup> Philip Marshall Brown, *The Interpretation of the General Pact for the Renunciation of War*. The American Journal of International Law 1929 p 374



aggressor " It is a real strengthening of the great principle of the prohibition of aggressive war, to which had adhered in 1928 the signers of the Pact of Paris

The success achieved at London is not only that of a formula, it is also, as has been pointed out by M. Donnedieu de Vabres, that of a method of work. Just as M. Briand had made the Locarno Treaties grow out of the failure of the Geneva Protocol, so M. Titulesco, out of the ruins of a draft General Convention, obtained the conclusion of the London Agreements. After the anarchic method of the pre-war diplomacies, after the lack of success of certain attempts of too general a nature at Geneva, we have here the use of a new method, which seems destined to be fruitful, for the organisation of world peace by passing through the stage of regional accords.

*President Roosevelt  
and the Generalisation of the Definition of the Aggressor*

However, the attempts looking to an universal agreement were not abandoned. The debate at the Conference for the Reduction and Limitation of Armaments, it is true, had revealed perspectives which were hardly encouraging for the generalised adoption of the established definition, because of the opposition of Mr. Eden in the name of the London Government. Even at that time, however, it appeared that this negative attitude could hardly be long maintained, at the moment when the President of the United States was proposing that any State whose armed forces entered foreign territory in violation of international agreements should be considered an aggressor. For on May 16, 1933, Mr. Roosevelt had expressed the wish, in a message to the Chiefs of State, "that all the Nations of the world sign a solemn and specific pact of non-aggression", and he contemplated "as a consequence of this pact of non-aggression, and on condition that the disarmament Convention was faithfully observed," that all the countries should bind themselves "not to permit any of its armed forces to cross its own borders into the territory of another nation." The objective sign, isolated by President Roosevelt as characteristic of aggression — penetration of armed forces into the territory of another State — is in complete accord with the conception of aggression of the Politis Report, as M. Dovgalevsky pointed out with lively satisfaction in the session of May 25, 1933.

A few months later, on December 29, 1933, on the anniversary of Woodrow Wilson, a new presidential message<sup>1</sup> referred to these declarations and confirmed them. "President Wilson had formally declared that the United States would never seek to acquire a foot of additional territory by conquest." The time had come to add to the declaration

<sup>1</sup> Cf. *Europe Nouvelle*, January 27, 1934



of President Wilson this further statement "The specific policy of the United States will henceforth be hostile to all armed intervention." And Mr. Roosevelt recalled with vigour that he had proposed a constructive plan of immediately possible steps to ensure peace, having asked, in particular that each nation make a simple declaration to the effect that none of them will permit its armed forces to cross its own frontiers to invade the territory of another nation such an act would be regarded by mankind as an act of aggression, which, in consequence would incur the condemnation of mankind. It is difficult to be clearer or to designate more plainly the goal to be reached, namely to obtain the introduction in the international law of all the States of an accurate definition of the formerly vague and elusive notion of the aggressor a step which is indispensable to the establishment of a solid basis for an effective organisation of peace.

The signatories of the London Conventions have henceforth such a basis for their relations among themselves. The Government of the United States is actively working for its generalisation, which is all the more remarkable in view of the traditions of that country. The French Government, in turn, has from the beginning shown itself favourable to such efforts. Having admitted the principle of the definition, the French delegation, resuming in its note of April 25 1933 the proposals of the Memorandum of November 14, 1932, sought to integrate that principle in a system of assistance to the State which was victim of an aggression and to secure the adoption, as a corollary of a strengthening of the principle of arbitration. It seemed preferable, however to do one thing at a time, so as to be more certain to succeed the rest of the French programme is still to be carried out.

Thus the Politis formula, its entry into positive law through the London Conventions, and President Roosevelt's project for a universal definition of aggression, mark a definite advance in international law. Already the Eastern Pact have strengthened the provisions of the Covenant of the League of Nations, — Article 10, which provides for the respect and the maintenance of the territorial integrity and of the political independence of the member States against all outside aggression and Article 16 which provides for specific sanctions. Once the definition of aggression admitted, the Pact of Paris also becomes fully significant, whereas the vagueness of its terms tended to make it a political nullity."

Moreover the definition of the aggressor introduces into international relations a great clearness and sharpness of outline. An irrefutable presumption designates henceforth as the aggressor the author of an act which it is easy to establish and which public opinion can judge directly. It is no longer necessary to inquire into the psychological motives behind the resort to force, the righteous or unrighteous intention of the State committing the forbidden act, in accordance with the views of the older authors of international law and even of the authors



of the Covenant of the League of Nations, who went no farther than to impose recourse to peaceful methods before resorting to force. The Pact of Paris, on which the London Agreements are expressly based, considers that even a war that is just according to the definitions of the canonists is an evil in itself, it should not be tolerated that a State should take arms, even in order to obtain a just reparation. It is forbidden that the State which has the law on its side resort to force. It must have the patience to await a peaceful solution.

To specify the forbidden acts, in order to avoid all attempts to evade this obligation, such is the highly important result obtained by the definition of aggression. It is a strong support for this idea, which should impose itself on the members of the international community that Rights can wait, and that Peace cannot.

## GREAT BRITAIN

(British Co-ordinating Committee for International Studies)

### RENUNCIATION OF FORCE

by W. ARNOLD FORSTER<sup>1</sup>

M. Bourquin emphasises that a prohibition of recourse to force, "more or less comprehensive," is the fundamental principle of a collective peace system. The question arises: Is the prohibition of recourse to force sufficiently comprehensively affirmed in the Briand-Kellogg Pact, or in the Pact coupled with the Covenant? There is now wide support of the view that the renunciation is not comprehensive enough to cover that policy which should be renounced. It became evident in the Sino-Japanese conflict that the word "war," as used in the Briand-Kellogg Pact (and in Article 16 of the Covenant) might, if legalistically interpreted, be too narrow for the purpose.

Various proposals have been made for extending the renunciation, so as to cover "resort to force." A proposal to this effect was included by Great Britain, France, Germany and Italy in the Geneva Declaration of December 11th, 1932, and in February, 1933, the British Government proposed for discussion "a solemn affirmation to be made by *all European States*, that they will not in any circumstances attempt to resolve any present or future differences between them by resort to force." It will be noted that this proposal was confined to European States.

On March 2nd, 1933, the Political Commission of the Disarmament Conference approved the form of a declaration whose signatories would "solemnly affirm that they will not in any event resort as between themselves, to force as an instrument of national policy." Twenty-seven

<sup>1</sup> See also pp. 91, 208, 353



States voted for this but there were fourteen abstentions. The question whether this declaration, if made, should be confined to Europe was left undecided. Great Britain advocated restriction, whilst the U S S R and others urged that it should be made universal if possible.

Amongst other recognitions of the principle, we may note that, in September 1934, the International Law Association, in its Budapest articles of interpretation of the Briand-Kellogg Pact, declared that "a signatory State which threatens to resort to armed force for the solution of an international dispute or conflict is guilty of a violation of the Pact."

Thus there arise here two questions which appear to deserve consideration by the International Studies Conference.

(1) Is it desirable that the existing renunciation of war as an instrument of national policy should be supplemented by a "renunciation of resort to force" or by a renunciation of force as an instrument of national policy?"

(2) If so, is it desirable that this renunciation should be submitted, at this stage, for the acceptance of all States, or only those States which are classed as European?

In considering the first of those questions, the Conference will have to weigh two considerations against each other. On the one hand, the nations ought to renounce recourse to force: it may fairly be claimed that this was implicit in the Briand-Kellogg Pact, and the principle should be established unequivocally as part of the social ethic on which a peaceful world order should rest. But, on the other hand, the undertakings given by nations should correspond sufficiently nearly to their real policies: to pile up engagements which go far beyond the sincere intentions of the signatories is to discredit engagements already accepted. And it is fair to say that in many respects the loyal observance of undertakings already given is much more needed than any verbal addition to, or tidying up of texts.

On the whole, the writer believes that in this case the additional declaration should be made.

In considering the second question, the Conference will presumably ask itself why the British Government proposed to confine the declaration to European States. Three explanations may be suggested. Possibly the Government assumed that there was no chance of Japan giving such an assurance, or giving it sincerely (Japan having already violated the Briand-Kellogg Pact). Or possibly the Government may have wished to reserve for itself that measure of "freedom of action" in certain regions of the world, "unspecified, which an earlier British Government claimed before accepting the Briand-Kellogg Pact. That so-called 'British Monroe Doctrine' of May 19th, 1928 has not been formally disavowed: certainly it has lost much of its significance through Great Britain's subsequent acceptance of the Optional Clause and perhaps it may now be regarded as having lapsed. Or possibly the Government, when submitting its original proposal for renunciation



of resort to force, " may have wished to reserve for itself a wider freedom of action — freedom, as an Imperial Power, to use force for the protection of British life and property in an emergency in foreign lands outside Europe and the Americas. It might be argued that such a resort to force would be different in character from resort to " war as an instrument of national policy ".

The problem here raised is a substantial one. A country in Great Britain's position, with widely-spread naval power, is likely to be very reluctant to forego entirely the claim to use its armed force for the protection of its citizens in some foreign countries where the protection normally afforded by the local forces of law and order are lacking or may become temporarily ineffectual. But on the other hand, it is evident that the citizen of Czechoslovakia or Denmark, who lives in foreign lands has just as much — or as little — claim to the protection of external armed force as the British citizen. It is evident, too, from the history of imperialist adventure, recently in the East and elsewhere in the past, that countries exposed to the risk of armed intervention by foreign Powers, have good ground for regarding the interventionist principle with apprehension. In these circumstances, and in the absence of an international naval *gendarmerie*, the following proposals might be considered

(a) That the nations should sign a declaration in the form proposed by the Political Commission, which should " solemnly affirm that they will not in any event resort, as between themselves, to force as an instrument of national policy ".

(b) That this declaration should be submitted for signature to all States, whether European or not,

(c) That the principle should, if possible, be established that, in the event of a State claiming to be using its armed force in a foreign country, not as an instrument of national policy but solely as a necessary protection for the life or property of its citizens in an emergency, the claim should be at once referred to the League Council for decision.

The essential point is that the renunciation of recourse to force should not be stultified by the reservation of a *self-judged* right of intervention or right of self-defence.

### Defining Aggression

This brings us to the cognate question — What provision can be made for prompt and reliable distinction between that " self-defence " which is still reckoned as legitimate under the world's peace code and that " recourse to force " which is to be condemned as an international crime.

The Conference will presumably consider the various proposed definitions of aggression, including the one formulated by the Security Commission of the Disarmament Conference and now embodied in



numerous treaties and the definition summarily indicated by President Roosevelt.<sup>1</sup>

The British Government has adopted a negative line on this subject. In a speech in the House of Commons on November 24th, 1927 Sir Austen Chamberlain deprecated any attempt to lay down in advance a sharp distinction between aggression and self-defence maintaining that it would serve as a trap for the innocent and a sign-post for the guilty. The same standpoint was adopted by the British Government in 1933 in regard to the Security Commission's definition.

The writer submits that a sound policy lies somewhere between the flat negative of the British Government and the simple affirmations of the Security Commission or President Roosevelt. A definition such as that adopted by the Commission is of value but should not be regarded either as an all inclusive formula or as an automatic test which can always be relied upon to cut with precision through a tangled political situation. It may be of very substantial value as a means of crystallising and extending the new social ethic as to the use of national force and it should help in the process of curtailing the anarchic liberties too often claimed by imperial Powers but it will not work by itself automatically. It must be used by an international authority it must be treated as a guide — normally a decisive guide — but not as an immutable law and in case of doubt, the international authority should be empowered to impose obligatory peace-conserving measures, including an armistice.<sup>2</sup>

One conclusion to be drawn is that the general recognition of an international authority or at the very least the recognition of a regular system of conference in time of crisis, is indispensable if the renunciation of force is not to be stultified by unjustified claims made in the name of self-defence. Mr Kellogg in his Armistice Day speech of 1928 declared that the United States would not yet accept a world-tribunal to decide when a nation has violated its agreement not to go to war. I do not believe that all the independent nations have yet arrived at the advanced stage of thought which will permit such a tribunal to be established. Mr Kellogg was, therefore, reduced to expressing the hope that the "tribunal of public opinion" would somehow serve the purpose — a nation claiming to act in self-defence must justify itself before the bar of world opinion as well as before the signatories of the treaty. In that situation, with no regular provision even for consultation in time of crisis, the distinction between aggression and self

<sup>1</sup> See above, p. 296

<sup>2</sup> The view is still held in England by some militarists and some extreme pacifists that no reliable means of distinguishing between aggression and justifiable self-defence can ever be devised. It is argued, in support of this, that historians still dispute as to the primary responsibility for this and that war in the past. Those who make this claim are blind to the changes that have been effected by the creation of an international authority and a code and technique of peacemaking.



defence must necessarily remain too shadowy and uncertain to permit of general confidence. Thus, an explicit undertaking by the United States to confer with the League in case of breach or threatened breach of the Briand-Kellogg Pact or the Disarmament Convention would be of substantial value as a contribution to the proper working of the collective peace system.

## THE PREVENTION OF WAR

by H R G GREAVES

Decision as to the aggressor must be prompt and there must be no opportunity of avoiding or delaying it. The effort of the U S S R to arrive at a complete definition of the aggressor is an interesting one but is open to objection, and above all does not provide for an immediate authoritative interpretation in a moment of crisis. It might serve, however, as a useful guide for the deciding body. Discussion must centre around this organ. Ought it to be the League Council, a judicial tribunal, a committee of ambassadors, or something else?

The Council has so far proved a fairly effective instrument for dealing with disputes between small countries or of a minor character. Where there is no risk and powerful interests are not affected, it can claim to have succeeded. Whether it will still be able to do so even here after its complete failure in the case of Japan is open to grave doubt. When we remember, moreover, that its successes were won in the period of war-fatigue when the spirit of internationalism was much stronger and more general than it is to-day our doubts about its future must be greatly fortified. But in the one case where the Council was faced with a major issue it broke down. Even the dilatory investigation carried out under its authority was due rather to the attitude of the Assembly than to its own initiative. And it never made any attempt to act upon the recommendations of its own committee of inquiry. There can be no question whatever that the consideration which determined its inactivity was the risk alleged by one or two national defence departments to attach to even a universal withdrawal of ambassadors. These clearly succeeded in their view through the veto of their one or two spokesmen on the Council. As long as such a possibility as this continues to exist there cannot be any widespread belief in the certainty of action by the Council. The need in fact is for a certainty that the Council will act, that obligations will be observed, that the tactics of postponement will not win the day in any major crisis. While a criminal government can paralyse the Executive by merely seducing one of its members there can be no belief in the certainty of executive action. And it is that belief rather even than the action itself which is required in order to guarantee security.

A judicial tribunal like the Hague Court is of unquestionable value



where conflict relates to matters about which international law already exists when the countries concerned have accepted the jurisdiction of the Court, and when there is plenty of time for judicial procedure to operate. But not one of these three contingencies can be postulated as a certainty for the type of aggression with which international authority must deal. Law may not exist. The Court's jurisdiction is hedged about by reservations. It may be doubted whether lawyers are the most suitable men for taking the kind of decision needed. And, in any case, immediate decision cannot be expected; and this is of the essence of the problem.

Lord Howard suggests, and others also that the Briand-Kellogg Pact Powers should implement the Pact by the addition of a Protocol empowering them through their diplomatic representatives in some capital, or through a special permanent commission for the purpose, to take immediate action by presenting the armistice ultimatum to the belligerent Powers warning them, at the same time, of the sanctions they will incur if they refuse to comply.

"It seems to me essential," he adds, "for the effective execution of an arrangement of this sort for the maintenance and re-establishment of peace that it must not be taken as the result of discussion or voting, *i.e.* by democratic procedure, as it would have to be if dealt with by the League but automatically immediately and without question."<sup>1</sup>

About this proposal three things must be said.

1. There is great force in the proposal to widen the basis of international action by resting it on the Briand-Kellogg Pact, and also to give teeth and claws to that at present meaningless instrument.

2. A Committee of Ambassadors does not meet the fundamental objection to action by the Council. In fact it is difficult to see what difference there is in the two methods since ambassadors, like Foreign Ministers, act on the direction of their Governments. There is no certainty that they will agree, or that one or two of them may not be in secret or avowed sympathy with the criminal government's policy.

3. While the necessity for immediate and automatic action is recognised in the last few words, the suggestion to debate discussion and voting is difficult to understand. Without discussion what is the object of meeting? Without the power to decide by majority vote if necessary — how can decision be automatic, sure, or immediate? Yet these are as it is rightly said, the imperative necessity.

### *As International Police Board*

The international organ required is one that has not to consider the immediate advantages of individual Governments and will not be bound by the permutations and combinations of day-to-day national policies. There must be a judicial approach. The finding should be based not on a compromise between opposing interests but on the conscious building up of a super-national technique. It is a disinterested body akin to the Permanent Mandates Commission that we want. Member

<sup>1</sup> *Prevention of War by Collective Action*



ship of it should as far as possible be independent of Governments. Its personnel must be authoritative. To assure this they ought to be chosen by the Council (under Article 5 and with the *ad hoc* membership of participant non-League Powers), to be irremovable during a seven-year term of office (except with the approval of the Council and Assembly), to be paid officials, to be forbidden any employment by Governments or outside bodies, and perhaps to be, by majority, nationals of other than Great Powers.

The lesson of the Mandates Commission is that a board composed on these lines develops an *esprit de corps*, a reputation for just and wise judgment, an authority generally recognised, and a valuable technique of international administration. Nor is it difficult to secure the services of such a body of eminent public men. The personnel of the Mandates Commission is evidence of that, and, taking into account the much greater importance of its work, it ought to be easy to find prominent international statesmen to serve on this board whose reputations would enhance its prestige.

The task of the board — one might call it the International Police Board — would be in normal times to think out and prepare the methods of applying sanctions. It would maintain contact with the necessary national departments. It would organise, if that were decided, an international air force, deciding in view of its general plans where sections should be stationed, how they should be officered, and appointing the air chief. It would develop a system of co-operation between the navies of the League Powers, and might have conferred upon it the control of certain naval bases. Above all, its functions must be so devised that they can grow as the Board proves its value and shows that it has reached years of discretion. It would have its plans ready for the application of sanctions whether diplomatic, economic, financial or military. It would consider each country and each type of sanction separately and devise the exact technique required in each case. It would be a permanent advisory body under the general supervision of the Council and might deliver a regular report on the progress of its work and the general political situation. In this it could, of course, bring to the notice of the Council any situation which required consideration. This report would afford the Council the necessary means of control, but it would not be easy lightly to criticise the report because of the impartiality and authority of those who prepared it. One of the chief lessons of international organisation is that Governments fear impartial expression of opinion because they know the strength of the public opinion which will support it. They are therefore more anxious to prevent it from emerging than to oppose it once it has been expressed. It follows therefore that the Board should have complete freedom to publish its findings.

But one of the main problems of the effective working of the League would still remain — the danger that the need for unanimity may



paralyse it at a critical moment. It is therefore of the utmost importance that this, the primary question, should be solved before anything else is considered. Now the history of League procedure — above all in the Assembly — suggests that modification of the dangers ensuing from the unanimity rule is best secured in practice by passing the responsibility for discussion to a committee, which can recommend by majority vote. The consequence of such a majority recommendation is generally that the minority give way when the ultimate decision is taken and either vote in favour or refrain from voting. Unanimity in this way becomes possible. The existence of the suggested Board might thus be expected often to produce a similar result. But this cannot be considered a sufficient safeguard in a matter of such great importance as the guarantee of security. All that can be said is that such an innovation would diminish the prospect of paralysis. We need a greater certainty and that can best be achieved, not only by mitigating the effects of the rule but by modifying the rule itself. What is required is the power in the Council to act by a qualified majority vote.

## NETHERLANDS

(Netherlands Co-ordinating Committee for International Studies)

### COLLECTIVE SECURITY

by J. LIMBURG and H. J. W. VERZIJL (*translation*)

Let us take up first the principle of the *prohibition of recourse to force*

(a) This prohibition, of course, condemns only the action of the State which takes the initiative of committing acts of violence against another State. A State acting in self-defence transgresses no fundamental norm of the international community. This fact hardly calls for an explicit statement, which might even tend to confuse the issue.

(b) However the international legal order cannot permit the continued existence of the present system, which leaves to each individual State the sovereign right to decide that it is being attacked and that, consequently it has the right to defend itself. The concept of aggression must be rigorously defined and no longer left to the arbitrary judgment of individual States.

(c) The prohibition is not directed, either against an action undertaken by a State in execution of an international sentence, when this action is authorised by a competent organ of the international community.

(d) The exact limits of the prohibition of recourse to force must be defined, not only in order to make it possible to distinguish between "defence" and "aggression," but also in order to set up a practicable



criterion between acts of violence condemned by the prohibition and other means of coercion

(e) It seems to us unquestionable that the prohibition of recourse to force must be modified to allow for cases of emergency, such as the immediate necessity of providing protection to nationals in mortal danger in a foreign country in consequence of serious disturbances within that country. The delicate character of this exception, however, necessitates special safeguards, which might consist, for example, in requiring the authorisation of a competent organ before action could be undertaken

## POLAND

(Central Committee of Polish Institutions of Political Science)

### DEFINITION OF THE AGGRESSOR

by WACŁAW KOMARNICKI (*translation*)

The essential idea of Article 10 of the Covenant is to safeguard the integrity of the Members of the League. A purely formal criterion is therefore hardly enough. M. Winiarski rightly remarks<sup>1</sup> that a war which violates the territorial guarantees of Article 10 is a war of conquest and that, from the formal viewpoint which is that of Articles 12, 13 and 15 of the Covenant, it may equally well be a licit or an illicit war.

The purpose of Article 10 is to maintain the *status quo* and to prevent its being modified by force of arms. That is what M. Scialoja meant when he defined Article 10 in 1921 as an *actio possessoria*. From this point of view, it would be the intention to annex rather than the armed invasion that would be decisive. This is the opinion of MM. Schücking and Wehberg<sup>2</sup> and also that of M. Winiarski, and it was the opinion of the Temporary Mixed Commission which prepared the Draft Treaty of Mutual Assistance in 1923. This Commission considered that the aggressor should be defined by his "aggressive intention," and that this intention might be manifested by refusal to arbitrate, by preparations for war, by mobilisation — military or industrial —, by propaganda, by the attitude of the Press, etc. On the other hand, the Commission was of the opinion that the violation of a frontier might

<sup>1</sup> Winiarski, *Security, arbitration, disarmament* (in Polish), Posen, 1928, p. 30

<sup>2</sup> Schücking-Wehberg, *Die Satzung des Völkerbundes*, p. 462. "The question as to when an external aggression against territorial integrity or political independence exists is to be decided, as stated above, according to the particular circumstances of the specific case. The simple military invasion of foreign territory is forbidden by Article X, if other norms of the State are not violated by it, only when the intention to annex foreign territory is bound up with it. This intention may become manifest at the beginning, in the course or after the termination of a military operation."



constitute for a small country a preventive measure of defence. The Commission expressed the opinion that there are cases in which the fact of aggression is incontestable for example, the case of a sudden attack. But when such a fact is hard to establish, it is the general impression which would serve as a basis for defining the aggression. Thus instead of formulating a precise definition of aggression, the Commission preferred to leave to the decision of the Council a large degree of liberty. However the States were unable to accept this recommendation, whence the failure of the Treaty of Mutual Assistance. The Commission had confused aggression with threat of war. More over "aggressive intention" constitutes a criterion which is too elusive and which, since it is entirely subjective, opens the way to arbitrary decisions. In a word the Commission gave up defining the aggressor thus implying that such a definition is impossible, — a view which would be fatal to the idea of peace and to that of respect of the law in international relations.

It is not only the attempts to define the aggressor by means of a convention that have given insufficient results. Inadequacy of the formal definition of aggression according to Anglo-Saxon conceptions in Article 10 of the Covenant and in the Geneva Protocol identification of aggression with war of conquest introduction of the hazy conception of the "general impression," as proposed by the authors of the Draft Treaty of Mutual Assistance in 1923 and by M. Scialoja in 1927 — international practice shows the same confusion, the same arbitrariness, the same uncertainty.<sup>1</sup>

We need only recall the Corfu incident of 1923 the proclamation on that occasion by the Committee of Jurists of the League of Nations, recognising the legitimacy of coercive measures the refusal of the Council of the League to authorise Greece to employ the same coercive measures in 1925 at the time of the conflict of that Power with Bulgaria and finally the Sino-Japanese conflict of 1931.

The Pact of Paris of 1928 aimed at a radical solution of these difficulties. The renunciation of war greatly simplifies the problem of aggression. Any State which, in spite of the Pact of Paris, goes to war becomes *ipso facto* an aggressor, and the preamble of the Pact deprives it of the advantages of the Pact. And, just as the undertaking of hostilities in execution of Article 16 of the Covenant of the League of Nations does not constitute an aggression, so an action undertaken

<sup>1</sup> The motion introduced by Switzerland on May 16 1933, at the Disarmament Conference (Conf. D/C.P./C.R.S. 6) clearly reveals this uncertainty. "That State shall be recognised as the aggressor which resorts to force in violation of its international engagements. This violation must be recognised by the Council of the League of Nations which shall be called together at once. In case of doubt, that State shall be considered the aggressor which shall refuse to submit without delay to a procedure of peaceful settlement." The dominant idea of this proposal is the refusal to arbitrate. It represents therefore a return to the position of the Geneva Protocol and is far from furthering the solution of the problem.



against a State which has violated the Pact of Paris is not characterised as aggressive

However, the importance of the Pact of Paris was seriously diminished by the reservations of Great Britain and of the United States concerning legitimate defence. The American reservations state expressly that it is as difficult to define legitimate defence as aggression and that, consequently, it is not in the interest of peace that the treaty should formulate too rigorous a concept of legitimate defence. Now it is extremely dangerous to state the problem in such a way, indeed, it would make it possible for States to resort to force without such action constituting war in the strict sense of the term.

Under these conditions, we do not think that it is indispensable to define the concept of the aggressor. The view of M. Ehrlich<sup>1</sup> might be accepted, that the rules of Article 10 would be sufficiently clear and adequate, if the States had not raised numerous difficulties and if it were not that various interpretations have been put forward which obscure the problem.

To be satisfactory, that is, to be applicable, the definition of the aggressor ought to be perfectly clear, so as to avoid dubious interpretations. This implies that it should not be too broad. We are therefore not in favour of the concept of aggression including all possible infractions of the fundamental rights of States. The contents and the limits of those rights do not, in fact, lend themselves easily to clear definition. There must be, then, a rigorous and objective criterion of the fact of aggression. Under the present conditions of modern warfare, the reply to aggression should be instantaneous, the application of international guarantees should be automatic, as soon as the fact is established that a situation exists which is sufficient to constitute aggression.<sup>2</sup>

We think, in accordance with Article 10 and with the spirit of the Covenant itself, that this criterion should be territorial. The territory of a State is in fact the exclusive sphere of its competence. To enter this territory, which constitutes its legal domain, a special legal title is necessary, which may be derived from a convention or from a situation of fact created by the State itself. This title may be the necessity of

<sup>1</sup> Cf. Ehrlich, *International law* (in Polish), Second edition, Lwów, 1932, p. 97. "Thus the mutual guarantee against external aggression, which follows clearly from Article 10 of the Covenant, is considered by certain parties as still requiring greater precision."

<sup>2</sup> The report of M. Politis (p. 6) separates the question of sanctions from that of the definition of the aggressor, although they are connected. The rigour of this definition does not therefore imply that it must be followed by automatic sanctions. Even in the absence of any international intervention, this definition keeps all its value, for it strengthens the authority of the prohibition of recourse to force and permits the public opinion of the other States to decide whether this prohibition has been respected. However, we should prefer that the conventions relative to the definition of the aggressor should not be confined to that subject and that they should contribute more directly to the strengthening of the guarantees of general security.



executing Article 16 of the Covenant, or an intervention on the basis of the Treaty of Locarno or again a reply to a violation of the Kellogg Pact, or finally an armed action undertaken against an aggressor. Any other armed enterprise, in the territory of another State, by land, by sea or by air constitutes a violation of that territory: it is an *aggression*.

Whether a foreign armed force invades the territory of a State with the intention of annexing it or in order to obtain redress for a wrong committed by the State in question is only of secondary importance. The crossing of the boundary of a State as M. Vignol puts it, — the invasion of foreign territory to adopt M. Litvinoff's formula — or to apply a still broader formula, any armed action in foreign territory whether it consists in a blockade or in a gas attack across the boundary constitutes an aggression.

There is a fundamental reason for presenting the question in this way namely contemporary opinion regarding territory which does not separate the territory as object from the State as subject, but considers that the territory is an element in the personality of the State. Any violation of territory is therefore a violation of the State itself, and not merely an attempt upon the property of the State. The new international law based on the participation of the States in the League of Nations, cannot permit the States to be attacked, for that would be contrary to its fundamental principles. The guarantee of the States which are members of the League must therefore be absolute and must be founded on a presumption *juris et de jure*. Any factual situation contrary to this principle must be suppressed before it is possible to institute an inquiry and to take further decisions.

Attention may be called to the fact that, in setting up the formula aggression equals invasion, we are not making a discovery but restoring its true meaning to this term which has been so cleverly confused.

The objection might be made that this definition applies only where there are clearly marked boundaries. But when this condition is absent or when foreign troops are already on the territory — as was the case in the Sino-Japanese conflict — it is impossible to speak of aggression in the sense in which we are taking this term. Mr Ray although he is a partisan of a territorial definition of aggression, expresses this objection in connection with that very Sino-Japanese conflict. We think, however that there is a fallacy involved here. In our opinion, the territory of a State ought to be taken to mean not only its territory *de jure* but also its territory *de facto*. Otherwise, the territorial definition of aggression would be without value. What is inadmissible, is that the armies of one State should invade a territory which is in fact placed under the authority of another State, on the pretext that the latter possesses no legal title to exercise that authority. It is here that must appear all the legal importance of the principle of non-aggression, in so far as it guarantees a state of possession in so far as it is, to cite M. Scialoja an *actio possessoria*.



## RUMANIA

(Rumanian Social Institute)

THE DETERMINATION OF THE AGGRESSOR (*translation*)

by VI SPASIEU V PELLA

If the Briand-Kellogg Pact forbids all acts of aggression — and this prohibition should be at the base of every system of collective security — it may nevertheless be asked whether it is possible at present to ensure universally the respect of such prohibition

It is clear from earlier documents, from the notes of the various Governments relative to the conclusion of the Pact of Paris, from the note of the American Government of June 23, 1928, and finally from the debates in the American Senate preceding the ratification of the Pact, that if war as an instrument of national policy is forbidden, it is impossible to prevent a Power from resorting to force in the exercise of *legitimate defence*. It is clear also that a State may resort to force in order to give assistance to another Power which is victim of an aggression. This interpretation is thoroughly logical and very clear, and needs no further explanation.

But who is to decide that the State in question is acting in legitimate defence? What organism is to have the right to take this decision? According to the Briand-Kellogg Pact and to the interpretations which have been placed upon it, each party exercises its sovereign and unilateral judgment as to who has violated the Pact. In other words, if hostilities have broken out between States A and B, it may happen that States C, D, and E, also parties to the Pact of Paris, consider State A as having violated the Pact, while the other parties, namely, States F, G, and H, consider on the contrary that it is State B which has violated the Pact. According to the Briand-Kellogg Pact, States C, D, and E will consider themselves freed from their obligation not to make war on State A, while States F, G, and H will consider that they have a right to make war on State B. Thus in case of a conflict in which interests, avowable or not, are at stake, certain States may profit by a conflict between two other States to resort to war in their turn, and to do so in the name of the rights which they derive from the Briand-Kellogg Pact. Thus is brought about a generalised state of war.

A way must be found, then, of creating a *consulting body* to deal with cases of violation of the Briand-Kellogg Pact, and, further, *an effort must be made to define legitimate defence*. In this connection, I cannot refrain from citing the words of Norman Angell: "If war breaks out one day between signatories of the Kellogg Pact, one thing can be predicted with absolute certainty: both belligerents will declare that



they are engaged in a defensive war both of them will be acting in self defence

In view of these circumstances it is absolutely necessary to know exactly in what consists legitimate defence in international law. It is absolutely necessary to define legitimate defence, directly or indirectly just as in domestic law so as to place it beyond the reach of the arbitrary judgment of the interested States. In the absence of such a definition, a State becomes at the same time judge and party in its own suit.

The best method of reaching a precise definition of what constitutes legitimate defence in international law is to define the aggressor.

On this point we agree entirely with the opinions of M. Politis, who has declared that by means of the system of the definition of the aggressor it is possible to remedy a defect which has been remarked and regretted in the texts of the Covenant of the League of Nations and of the Pact of Paris.

These defects must be remedied, then, as has often been repeated, by creating legally a presumption which, being easily applied, will be, for Governments inclined to resort to aggression or to violence the most salutary of warnings.

If the Geneva Protocol of 1924 be compared with the draft definition of the aggressor prepared in May 1933 at the proposal of the Russian delegate by the Committee on Security of the Disarmament Conference — a draft which certain States placed in force by the Conventions of London of July 1933 (Litvinoff Titulesco Conventions) it is impossible not to recognise the superiority of the definition of the aggressor contained in these conventions. The definition laid down by the Protocol of 1924 had, to be sure, the force of a presumption, but a presumption open to proof of the contrary and the administration of that proof might give rise in many cases to grave difficulties. It was a presumption *juris tantum*.

The new definition of the conventions of London operates on the contrary legally absolutely automatically on the basis of material facts which can easily be verified." By these conventions has been instituted in international relations a presumption *juris et de jure*.

The almost automatic determination of the aggressor is, moreover, absolutely necessary in order to ensure the rapidity and, in consequence, the effectiveness of the assistance which the other States are to give to the victim of the aggression.

Because they define acts of aggression, because they affirm in their Preamble the perpetual character of non-aggression, because they respect the fundamental principle of international law *pacta sunt servanda* " since the agreements in force between the parties in conflict are maintained, — the Conventions of London of July 1933 must be accorded very special consideration if it is really desired to organise a system of collective security.



The Conventions of London place no obstacles in the way of assistance. Existing agreements being safeguarded, in accordance with Article 2 of these Conventions, any participation in a common action, particularly in virtue of Article 16 of the Covenant of the League of Nations, or in virtue of any regional accord (bilateral or multilateral), which implies an obligation of assistance, is authorised by the said Conventions, and could not in any case be considered as an act of aggression.

Adopting entirely the point of view already expressed by M. Politis in the learned report which he prepared in 1933 in the name of the Committee on Security, we wish to repeat that the method of defining the aggressor constitutes the basis of any system of security, because it puts an end to doubts and controversies as to whether the States which have resorted to force have or have not committed an act of aggression.

We wish likewise to specify that the *excuse of provocation* to justify aggression ought in no case be admitted in international law. On this point, it should be pointed out that the Conventions of London abandoned the expression "*unprovoked acts of aggression*," which occurs in certain treaties or draft treaties. This expression may lead to the gravest abuses, for, as has been pointed out, it would be very easy for each State, for reasons of policy, to seek to justify or excuse the aggression.

Moreover, according to M. Politis, either the provocation constitutes one of the acts of aggression defined by the Convention, and in that case the State which has been victim of such an act, since it is in a position of legitimate defence, can obviously retort by acts of similar nature, and in that case there is no difficulty, or the provocation consists in a violation of international law or in unfriendly attitudes of Governments or of public opinion, without there being an act of aggression. In the latter case, provocation cannot be considered as an excuse.

## GENEVA SCHOOL OF INTERNATIONAL STUDIES

### DEFINITION OF AGGRESSOR

by J. H. RICHARDSON

Circumstances vary so greatly that an entirely satisfactory definition for determining an aggressor can scarcely be devised. Nevertheless, agreement upon a definition which will cover most situations is desirable, especially to facilitate rapid action by the collective system. M. Litvinoff's formula is reasonably comprehensive, he proposes that a State should be regarded as an aggressor if it commits any one of the following acts: (1) declares war on another State, (2) invades another State, with or without declaration of war, (3) attacks another State by land, naval or air forces with or without declaration of war, (4) navally blockades



*period of validity* Since the League of Nations," it says involves associated action by the various States without any derogation of their sovereignty it is important to emphasise the principle that the ultimate political responsibility for the treaties and for the policy underlying them rests with the Parliaments and peoples of the contracting Powers. Long-term and *a fortiori* permanent engagements would be in contradiction of this and would tend to make the electors neglectful of their obligations. Had the Belgian Treaty been renewable at regular intervals the position in July 1914 would have been clearer. It is suggested that the whole series of treaties should be for a period of ten years only. This would provide useful opportunities at regularly recurring intervals for the amendment and extension of obligations or, should public opinion in any country set in that direction, for their denunciation.

Probably however the actual guarantee of *peace* (the italics are in the original text) on which the League is founded should be a permanent engagement and, in this case that simple guarantee, embodying the provisions agreed upon for the pacific settlement of disputes and for regular conference together with a statement of principle, should be embodied in a separate treaty."

In a subsequent paragraph there is a criticism of President Wilson's 14th Point which spoke of "specific Covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small States alike." The question arises "the document says, whether a specific guarantee to that effect should be embodied in the settlement. Recognition of the political independence of the contracting Powers is implicit in a treaty compact, and their territorial integrity is equally implied by the fact that the numerous geographical provisions embodied in the treaties will be endorsed by all the signatories. It may be doubted whether it would be wise to go further and to select the political independence and, in particular the territorial integrity of the signatory States as matters requiring a specific guaranteeing clause. Such a guarantee would seem to imply that the frontiers of the signatory States as they stood at the signing of peace, were regarded as being unalterable in all circumstances. On the other hand, it is essential that the provisions of the treaty should be clear and explicit, and it is dangerous to burke what will be a burning question, *i.e.* whether territorial integrity is or is not implicit in the treaty compacts and whether the League is pledged to intervene against forcible transfers of territory and alterations of boundaries. It seems preferable, therefore, to exclude such a guarantee from the permanent treaty suggested under Section I above" (the passage already quoted) but to include it in the individual treaties concluded for the brief period suggested above."

The only other passage in the document which is of relevance in this connection occurs in a later paragraph, which runs as follows



“ As regards the settlement of disputes we should take our stand on the scheme laid down in the Phillimore Report and should support the embodiment of provisions to this effect in the General Treaty referred to in Section I above ”

Putting these two passages together, we obtain a clear idea of the nature of the British guarantee scheme which was superseded at Paris by President Wilson's project

It was a *guarantee of peace pure and simple* in other words a mutual guarantee between the members of the League “ great and small alike ” under which they would be bound, jointly and severally, to take action against any State which broke the peace for any reason whatsoever. It was thus a much wider guarantee than that actually embodied in the Covenant — for the Covenant, under Article XX, allows a loop-hole for war

Much ingenuity has been spent by commentators on the Covenant in attempting to reconcile the limited guarantee of Article X with the possibilities arising out of the loop-hole for war in Article XV. This is in fact one of the most crying discrepancies in the structure of the Covenant

The origin of this discrepancy is now clear. It is due to the fact that the original British scheme, whilst providing for the *settlement of disputes* along the lines of the Phillimore Report, never contemplated that the door would be left open *for war*. It only contemplated the door being left open for a suspension of the procedure for *peaceful settlement*. The prohibition of war was provided for in another part of the scheme, which disappeared owing to President Wilson's predilection for a specific territorial guarantee

Thus the original British plan, when its true outlines are revealed, closely resembles the Kellogg Pact. It embodies the same two principles

1. No resort to war

2. No settlement other than by peaceful means, but with no further obligation in regard to these means. But it differs from the Kellogg Pact in that it is positive, rather than negative, in its approach. It is a general joint and several guarantee for the maintenance of peace and the restraint of States resorting to violence, whilst the Kellogg Pact is merely a collective treaty embodying a number of individual *renunciations of war*

The British scheme does not discuss the problem of the sanction behind this guarantee. There can however be little doubt that, had the scheme been proceeded with, the sanction clause of the Phillimore Report, — later embodied in Art. XVI of the Covenant, would have been made use of for this purpose



## B — DISCUSSION

*The question of the determination of the aggressor was discussed in the Fifth Study Meeting of the Conference which was held on Thursday morning, June 6 with Mr Allen W DULLES in the chair. Professor DERYNG was called upon to speak. After recalling that his country had concluded with one of its neighbours in 1933 an international convention containing a definition of the aggressor Mr DERYNG continued his statement in the following words*

Professor ANTONI DERYNG Central Committee of Polish Institutions of Political Science (*translation*)

Aggression does not include merely attacks against territory but also any objectionable propaganda which may threaten a State the latter is consequently forced to take appropriate steps to defend itself

There is also another grave question, namely the menace of the use of armed force, the very existence of that armed force ready for action or even beginning the attack without waiting for war to be declared This is obviously a case of aggression.

It has been argued very plausibly that any definition of aggression or of the aggressor or even any exact statement of the limits of self-defence runs the risk of being too rigid, of lacking flexibility and of serving at the same time as a sign-post to the aggressor showing him how to go about the task of posing as the victim I do not share these fears nevertheless, I wish to offer certain observations, from a theoretical and legal viewpoint.

Law consists essentially not so much in external constraint as in the recognition of the legal obligation. The legal obligation, the legal rule, authorises us to presume that it will be carried out in good faith it is impossible to presume that there will be an abuse of law as the Permanent Court of International Justice has stated such a presumption would be contrary to the very basis of law

Since, therefore, the abuse of law in general is not to be presumed, it ought not to be presumed either in the special case of the rules which contain the definition of the aggressor

It might be further argued that this is a question which is not sufficiently explored to be settled legally But the Convention of London can furnish the proof and the reply to this question.

I should like to touch on the question of procedure, and also on that of the organs to which might be entrusted the task of deciding whether aggression has taken place and of identifying the aggressor I think that, in doubtful cases, this question can be satisfactorily settled by the system and with the procedure, properly adapted, of the League of Nations as Professor Komarnicki proposes in the memorandum which he has submitted to the Conference.



May I add that in my opinion it is desirable that the Convention of London should become a general convention within the framework of the League of Nations, that the idea of the aggressor should be broadened and adapted to the needs of collective security, in such a way that every act contrary to law and justice would be repressed by the effort of all, and finally that the definition of the aggressor should become a solid basis, a general principle for the preservation of international order and of collective security

There are still certain other observations which might be made. First, that the definition of the aggressor should correspond to the degree of development of international law, secondly, that it is impossible, as a general rule, to presume the abuse of law, which is important in connection with any definition of the aggressor, finally, that a system of collective security, even in the narrow sense of the term, cannot function regularly without some indication of the law regarding the aggressor

Dr HUGH DALTON, British Co-ordinating Committee for International Studies

I propose to confine what I have to say to the narrow question of the definition of the aggressor. The *prima facie* argument for defining the aggressor is that if we use a word, we should know what we mean by it.

Some eminent authorities have recoiled from the prospect of precision in this matter. Sir Austen Chamberlain, for example, in a phrase which has stuck, said that a definition of the aggressor would be "a trap for the innocent and a signpost for the guilty". This view is not unanimously held in this country. In England there are diversities of opinion, and expressed diversities of opinion, wider than in some other countries.

Personally I do not at all share Sir Austen Chamberlain's view, nor did the authors, including the British authors, of the Geneva Protocol of 1924, though at that time they were not prepared to go farther than to enunciate certain legal presumptions which might be rebutted by special evidence.

Since then we have moved, personally I am glad we have moved, into an era of greater precision, and our Polish colleague who has just spoken, as he reminded us, comes from a country which has not been afraid of signing a treaty with its most powerful Eastern neighbour, in which a definition of aggressor is made precise and is made the basis of the non-aggression treaty of which he has spoken.

For my part I think that those States which have concluded treaties — Poland, the Soviet Union and the rest — including a precise definition of aggression have done a good service to the development of international law.

I regret that so far the British Government has preferred the path of



imprecision. It is not to be supposed that love of imprecision in this matter is peculiarly and universally an Anglo-Saxon prejudice. President Roosevelt, in one of his many — I regret disregarded — appeals to the Disarmament Conference, proposed a still simpler definition of aggression, and expressed the hope — I regret quite unfulfilled — that every nation would make a simple declaration that none of its armed forces should be permitted to cross its frontiers to invade the territory of another nation. Such an act, the President suggested, should be regarded by humanity as an act of aggression, which consequently would call for condemnation.

For my part I see no sufficient reason for the nations assembled at Geneva — particularly when the Disarmament Conference has been sticking so badly for so long — to have refused the easy triumph of agreement, at least on this one point offered them by the American President.

As to the definition of aggression, — which has now been embodied in the treaties of non-aggression concluded between Poland and the Soviet Union and between a number of other pairs of States, — I call it for convenience the Soviet definition, — I wish to pay a tribute not only to these Soviet citizens who evolved the definition, but also to those representatives of other States, including Poland, who were willing to join in treaties on that basis. All these share the credit for this forward step.

But it is in one respect, perhaps, inconveniently wide in the present state of European and of world opinion, for it includes a provision that it shall be an act of aggression to render assistance to armed bands operating in the territory of a neighbouring State, and this raises very difficult questions of evidence.

In Europe to-day there are many countries — I will give no named examples — in which certain bands armed or desiring to be armed, or clandestinely armed — are, it is alleged, financially encouraged from across the frontier. This is alleged and it is denied, and I can see very great difficulty in attempting to include this particular element in the definition at this moment.

I name one country my own. Here up to date we disallow private armies. Here up to date there is both a legal monopoly and an actual monopoly for military uniforms and armed forces vested in the forces of the Crown. A very few people desire to break down this British habit, in which I believe they will be unsuccessful but they have from time to time shown signs of activity not dissimilar from activities which we have observed in other countries, and we ask where is the money coming from for this. Some of us suspect that these pretensions have been nourished by funds from outside this country.

The point which I am seeking to enforce is that this particular element in the Soviet definition of aggression goes so wide as to provoke controversies and difficult conflicts of evidence, and I suggest for the



consideration of this Conference that perhaps the best definition, if you seek both precision and practicability, is something intermediate between President Roosevelt's extremely simple definition and the more complicated definition adopted in such treaties as the Polish-Soviet treaty

One word on President Roosevelt's definition in respect of the only serious objection that I have ever heard put up, namely that here too there might be a conflict of evidence. This has been raised in connection with the Western Air Pact. How will you know in country A, whether B or C is the aggressor if simultaneously you receive from both countries reports that they have been attacked in the air by the other? How are you to resolve conflicting reports of the initial act of aggression from the air?

It is possible, of course, that a nation, a Government, intending to attack its neighbour and bomb its capital, might take the precaution of bombing simultaneously with its own aeroplanes the military attaché resident in its capital of the State whose assistance it desired illegitimately to obtain for itself. This is possible, but quite frankly I cannot believe that in practice this difficulty would be found to be very formidable. And if this difficulty falls, then all the objections to President Roosevelt's definition on the score of practicability, fall with it.

So far I have spoken only of acts — what we may call, using "war" in a popular sense — acts of war, acts of aggressive force with or without a declaration of war, and it is perhaps most pressing to define the aggressor in this most narrow sense. But there are evidently many wider questions. There are acts of aggression falling short of war, there are unilateral repudiation of treaties, particularly treaties limiting armaments, there are what in one Memorandum submitted to this Conference have been called acts of moral re-armament, persistent campaigns of vilification in the Press of one country against its neighbours. One might go very wide in considering how far acts for which Governments can be held responsible, falling short of aggressive and bloody force against their neighbours, should be properly classed as acts of aggression.

There is a certain school of thought which suggests that aggression though it can be defined, can also be condoned. Curiously enough this view is sometimes put forward by persons posing as Pacifists, in this country at any rate. It is a most dangerous doctrine. We should rather lay down two parallel propositions

- 1 That aggression is prohibited subject to effective sanctions
- 2 That appropriate principles and methods of peaceful change are prescribed

Professor MALCOLM MCPHERSON, Canadian Institute of International Affairs

I should like to raise a point suggested by what Dr Dalton has said. He has given a certain amount of attention to the final act of aggression as described in the Litvinoff-Politis formula for defining the aggressor



I would suggest that his objections to the inclusion of this Fifth Clause in the formula are just a little unfair to the formula itself

Dr Dalton has suggested that the Soviet formula, as he calls it, includes as an act of aggression the countenancing of the invasion by armed bands of one State of the territory of another State.

Now I quote here from the statement of the Litvinoff Politis formula given by Mr. Horsfall Carter in one of our memoranda. The fifth point in the formula mentioned says, "Providing support to armed bands" — I would suggest in the first place the phraseology is very very definite — "providing support to armed bands which have invaded the territory of another State." The next important point is, "despite the appeal of that State that such support be withdrawn."

Dr Dalton seems to have forgotten all about the necessity for this preliminary appeal, and the preliminary appeal seems to me to open necessarily the whole field of diplomatic endeavour to have the situation rectified. One would imagine that even under the working of such an incomplete collective system as we have had, this appeal would immediately bring in action on the part of the League of Nations and presumably therefore that there would be a very wide field for possible settlement.

But a more serious objection to Dr Dalton's contention is that his definition of aggression would not be exhaustive. There is no doubt whatever that such an action as providing support for armed bands which invade the territory of other States is aggressive. I do not think anyone would be likely to dispute that. If Dr Dalton therefore wishes to leave this out of a definition of the aggressor then it seems to me that he is only going four fifths or nine tenths of the way towards defining an aggressor.

He has stated his desire to have aggression defined, but he is apparently willing to limit himself to a definition of only a number of acts of aggression and to leave one or two others unspecified. I suggest therefore that a rather more sympathetic consideration of this formula might perhaps persuade Dr Dalton that it should be rather more completely agreed with.

**LORD LYTON** British Co-ordinating Committee for International Studies

I intervene for the purpose of putting a question. We are discussing this morning the definition of the aggressor, but I am not aware — may I be corrected if I am wrong — that we have been told by the Rapporteur or by anybody else exactly in what connection the definition, if it is obtained, is to be used. Is it, for instance, a definition to be put into treaties of non-aggression? If countries agree to abstain from aggression it is obviously necessary that aggression from which they are going to abstain should be defined.

Is it contemplated that such a definition should be an amplification



of Article X of the Covenant where the States agree to defend each other against external aggression?

Is it to be for the purpose of guiding the Assembly of the Council of the League of Nations in particular crises as they may arise? I think it would be helpful to us in forming our opinion if we could be told by someone, yourself or the Rapporteur, in what connection such a definition, if we could agree upon it, was to be used

M MAURICE BOURQUIN, General Rapporteur (*translation*)

The question raised by Lord Lytton is extremely pertinent and is fundamental to our whole discussion. I am all the more of this opinion because, at the Disarmament Conference, at which I was present, it is this question that I myself asked when a formula for the definition of the aggressor was offered. I was unable to obtain a reply.

We must know what we are doing. The definition of aggression and the determination of the aggressor are two very different things.

To define aggression is to define the prohibition of resort to force, since aggression is the violation of the rule which forbids resort to force. From this point of view, the only question is whether we are merely to prohibit resort to war, or whether, going further, we forbid resort to certain armed coercive measures which are not considered by the jurists as constituting war.

The determination of the aggressor is quite a different problem. The question is to identify, among several States already engaged in hostilities, the guilty party, — to say where the responsibilities lie. When the aggressor is to be determined, hostilities have already begun, since it is assumed that there is an aggressor, there must have been an aggression, that is to say, two or more nations are fighting one another, but the situation is probably complex, for otherwise it would not be necessary to determine the aggressor.

Among the States which are fighting, which is the one which has committed an aggression, which is the guilty party? Why is the need felt of determining the guilty party? It is not for the pleasure of attributing blame or praise, it is because the point of departure is the idea that the aggression must be repressed, that sanctions must be applied to the guilty and aid brought to the victim or victims.

The problem of the determination of the aggressor is of capital importance, it is a problem leading to a practical consequence, tending to set in motion a social reaction against one of the States in conflict, and to secure to the other the advantage of the protection of the society. That is how I understand the problem. There is, in fact, an essential distinction to be made between the definition of aggression, which is merely the definition of the rule forbidding resort to force, and the determination of the aggressor, which is an act of reprobation, tending to designate, among the States in conflict, the one against which sanctions are to be applied.



Professor RENÉ CASSIN Commission Française de Coordination des Hautes Etudes Internationales (*translation*)

The explanation given by the General Rapporteur, in reply to the questions of Lord Lytton, renders easier the explanations which I myself wished to offer

I believe too that a distinction must be made between the facts which constitute an aggression, the organs empowered to decide that an aggression has occurred and to determine the aggressor and, finally the consequences to be drawn from these decisions.

We need not, for the moment, speak of these consequences it will be time for that when we take up the subject of sanctions

As to the facts which constitute an aggression, I am happy to learn that Mr Dalton has adhered to the formal criterion adopted at the last Geneva Conference by certain nations and inserted in various treaties

In reality the possible objections do not escape us but there are two points which I should like to stress particularly

A formal criterion, though it may seem objectionable to us from the moral viewpoint, has at least two advantages

In the first place it incites the States to prudence. No one can say "I shall begin by using violence, and shall then plead self-defence or allege excuses" Everyone is moved to exercise prudence in the use of armed force. This criterion, this definition, in itself, then, already works for peace.

On the other hand, a criterion, a formal definition, possesses objectively the advantages of certainty and of legal precision — though this certainty and this precision are perhaps somewhat arbitrary and these advantages had already in 1924 encouraged the authors of the Geneva Protocol.

M. de la Pradelle and I were members of the French delegation at that moment. The legal presumptions which had been brought out in 1924 were not perfect, but they pointed out a route. There is reason for satisfaction in the fact that this route has been followed.

But once aggression has been defined on the basis of a formal criterion, whether it be the invasion of a territory or the other criteria adopted by the Convention to which I have alluded, it is necessary to take into consideration another question of great importance, namely that which is raised by acts of such a nature as to prepare for an aggression, but which do not in themselves constitute an aggression. The definition gives a penal character to the crime of aggression the preparatory acts to which I allude should be considered as constituting another infraction.

This is another problem which is being studied in the Council of the League of Nations. The question is what the Council, what the League of Nations can do regarding a State which, without committing an aggression, should perform repeated acts in violation of international



engagements, notably of a collective engagement concerning armaments. It will be necessary to provide special sanctions for this offence, which, it must be admitted, is less serious than aggression, which is the major crime. In this field, the practical consequences of the definition of aggression must now be drawn by going farther and creating, short of the crime of aggression, other offences defined accurately and having specified consequences.

As to the organisations empowered to decide whether aggression has taken place, I agree with what has been said regarding the practical difficulty which is encountered, but on this point an effort must be made to pass from the realm of theory to that of practice.

In theory, a crime of aggression is committed, with characteristics which have been legally defined; then a Court of Justice, the Permanent Court of The Hague, in its general branch or in a criminal division, might be capable of passing a final sentence regarding the guilt of the crime of aggression. That is the true legal doctrine.

The rôle of the Council of the League of Nations would be then that of a policeman, imposing an armistice, halting hostilities, so as to allow the Permanent Court of International Justice to reach its decision slowly, serenely, solemnly.

In theory, this is a magnificent plan. But we feel that it does not correspond to reality. To preserve order in the world does not, in certain cases, mean merely to set in motion a few policemen. If sanctions are appealed to, in a world in which there is not yet an organised international police force, there is a risk of setting in motion all the national armies. It is not possible that the Council of the League of Nations should decide in favour of making such a recommendation without having itself examined matters.

That is why, in the imperfect society at present constituted by the international legal community, we must give cognisance of the crime of aggression, not to the Permanent Court of International Justice, which needs time to reach its decision, but to a political organ deciding *prima facie*, with, however, the help of the guidance which the conventions have given it.

Thus the Council of the League of Nations is charged with a momentous task which it must perform very rapidly, it must therefore be given assistance, — just as the Permanent Court would have to be helped by the Council if it were called upon to decide the matter. It is therefore necessary to create, for the work of deciding whether aggression has taken place, side by side with or subordinate to the Council of the League of Nations, permanent technical organs whose function will be to facilitate immediate decisions of fact. It would be desirable, for example, to create in each country — as was proposed at the Disarmament Conference — a certain number of permanent commissions whose task it would be to establish the fact of the aggression of which a State might be victim. Military attachés, scholars, and



diplomats residing in a country might be designated in advance to perform this task if the need should arise.

There might even be created, in addition, a sort of International Police Board, including officers experts, or certain other persons whose names would appear on a list, who could be sent wherever circumstances might require.

Please note that all this is not a proposal which I have invented suggestions have already been made but an attempt must be made to demonstrate the necessity of commissions of this sort, precisely because the Council is charged by force of circumstances with a mission which should normally have been entrusted to the judicial branch.

The question would still remain of the consequences of the establishment of the fact of aggression. Having maintained and accepted the formal definition of aggression, I understand the scruples of certain of our colleagues, who state in their memoranda that it will be difficult to ask the nations for mutual assistance in order to hurl them against a nation which has been designated as the aggressor merely because it has violated the law when, in reality it is that very nation which has the right on its side and which has been provoked. It is obvious at once that policy and justice might both oppose mutual assistance directed against this so-called aggressor.

We must free ourselves little by little, from this constraint, in order to advance toward the condemnation of the aggressor and we must also learn to distinguish the crime, with the elements which constitute it, from the justifying causes which might later be invoked.

With an international police, the problem would be simplified. It would no longer be necessary to invoke mutual assistance immediately. Everyone would consider it natural that, if a State had crossed its neighbour's boundary the international police should order it to return to its own territory.

A precise legal definition of the aggressor, then, constitutes a step in advance. In spite of our scruples, we should persevere in this path which tends to the creation of a penal law within the framework of the League of Nations. But because of the imperfection of international society the organs charged with establishing facts will not for a long time be the normal organs of a society and it will be necessary to accelerate the evolution in order to have as soon as possible auxiliary organs side by side with the Council of the League of Nations for the purpose of rapidly designating and halting the aggressor.

Professor RICHARDSON Geneva School of International Studies

I wonder whether in our desire to face realities we are attaching sufficient importance to the problem of provocation. This problem is closely related to the difficulty which Dr Dalton indicated in discussing the definition of an aggressor where armed bands are being subsidised in another State. In certain circumstances where provo-



cation is sufficiently serious, it may be healthier to resist by force than to continue in a condition of strain and irritation. It is difficult to include provocation in a clear and workable definition of aggression.

Then, there may be two States of approximately equal strength, each determined to secure objects which are conflicting, and neither is willing to give way. In these circumstances, the incident which, under a definition of aggression, might fix the responsibility upon one of them may be a very artificial means for determining against which State the force of collective sanctions should be directed.

The problem of provocation is relevant in considering the type of international organisation to be set up with a view to deciding which State is the aggressor. I do not consider that a permanent technical body of experts or an organisation based upon the model of a Court of Justice is the right type of body for reaching such a decision.

The decision will be taken by Governments, and they will be influenced by all the circumstances, including the factor of provocation. If the act of aggression is flagrant and falls easily within the definition, there may be little difficulty in identifying the aggressor, but where the issue is complicated by provocations, or where there is a clash of two forces and the nominal act of aggression is unimportant, it will be difficult in practice to secure agreement as to which State is the aggressor, and, therefore, the certainty of collective action for the prevention of war will be diminished.

While I agree with the suggestions which Dr Dalton made at the end of his speech, I think he would probably agree with me that, although his proposals would facilitate the reaching of decisions about some acts of aggression, there will be others so complicated in practice that the agreement to apply collective sanctions will be less certain.

Mr MALCOLM DAVIS, European Centre of the Carnegie Endowment for International Peace

Dr Hugh Dalton's balanced conclusion has indicated that the matter under discussion presents a dual problem for the satisfied States, to identify the aggressor against any international right, for the dissatisfied States, to identify the obstructor of any peaceful readjustment of situations.

I add only that for all disinterested neutral States, in forming their policies, both of these purposes are of great import.

Senator ROBERT FORGES-DAVANZATI, Centro Italiano di Studi Internazionali (*translation*)

I was sure that the determination of the aggressor would become the crucial point of the discussion. Certainly, if we cannot determine the aggressor, if we do not know who is qualified to decide who is the aggressor, all discussion about the prevention of aggression and about the sanctions to be applied to the aggressor loses its value.



I have decided to take part in the discussion for another reason as well. This question of the determination of the aggressor is raised almost at the end of our discussion. As a novice in this Conference, I wished to wait until I had heard the opinions of all the members in order to see whether it was possible for me to modify the opinion expressed in my memorandum — namely that the idea of collective security was open to criticism, as well as the method resorted to in defining this idea.

I have paid strict attention to everything that I have heard, and I must confess — we must speak frankly and sincerely here — that in my opinion the method resorted to is false.

Our General Rapporteur has made a praiseworthy attempt to define the questions to distinguish between them, to introduce order into the discussion but the method is not new — it is the one that has been much employed since the war — the abstract method, which takes each question by itself and considers it from a viewpoint that is legal rather than political, and which aims at reaching solutions valid for all the nations, for all occasions, for all events and for all circumstances.

I believe on the contrary that even in studying these questions, we should remain on the political level, on the level of reality. Regarding the determination of the aggressor and those consequences of that determination to which M. Cassin alluded, we observe that if it has been possible to accomplish something, it has been when two States have agreed on a pact of non-aggression concerning certain questions.

If we wish to define the aggressor for all occasions, so as to be able to deduce the consequences of this definition, we see that even if we reach a clear definition — and there is no agreement on this point — we have accomplished nothing. It is still necessary to find out who is to apply this definition and then to decide on the sanctions to be applied, that is to say the tragic, the dramatic undertakings which are to engage the responsibility of States and nations.

We have employed this abstract procedure in all the questions that we have examined — we shall resort to it again when we discuss neutrality — but I believe that it is a fundamental error to do so — for we forget the experience that we have had since the war with this universal legal method. I mean the real history — not the oratorical or propagandist history — but the real history — of the constitution and functioning of the League of Nations.

Professor WEBSTER, British Co-ordinating Committee for International Studies

I use to say that there is a great body of opinion in this country which does not agree with Dr Dalton as to the generalisation of the aggressor and for this reason — because the question of aggression is very different in different parts of the world. If you generalise in a way which is to apply to all parts of the civilised world, you either have to make some



thing so vague that it means very little, or else you fail to take into account the particular circumstances of particular parts

Aggression is probably a very different thing on the Western front of Europe from what it is in Central or Eastern Europe. It is a still more different thing, in certain areas of the Pacific. In Manchuria, for instance, aggression may be a very different thing from what it is in Central Europe. It may be still more different in Africa, and we are conscious it may be still more different in Afghanistan. The circumstances of different areas of the world are different, and therefore if you use general definitions you are likely to create situations which will be impossible.

What then is the remedy? Surely the remedy is to regionalise the definition of the aggressor as you regionalise the pacts of assistance. You can then apply to the different parts of the world the different circumstances that are necessary for the different parts of the world.

In the war of 1914, how difficult it was to determine the aggressor except in one particular case when it was admitted by the aggressor himself, in the case of Belgium. Was not that a regional pact guaranteed against particular circumstances? In the same way, if you regionalise your aggressor, I think you can cope with the different circumstances of the World.

Professor PAUL MANTOUX, Graduate Institute of International Studies,  
Geneva (*translation*)

I should be tempted to call to mind the principle laid down by Jaurès, namely that the aggressor is the one who refuses arbitration. It is too simple to furnish the solution of the problem as a whole. Let us, however, see whether it is valid as applied to more limited questions, in particular the question of the stopping of hostilities. Resistance to the command of an international authority ordering the measures necessary to put an immediate stop to hostilities might be considered as constituting, for this case, a formal definition of aggression.

If we go beyond this relatively simple case, situations, no doubt, immediately come to mind which seem to make the application of this criterion impossible.

The first of these situations is that in which the belligerents obey the command, that is, stop fighting simultaneously, but in which the aggression has had immediate consequences so grave (in the case of an air attack on a large scale, for example) that the results are practically irreparable. But in this case, after all, since hostilities have been brought to a close, the only remaining question would concern the payment of damages and reparations, and this question could be dealt with at leisure by more or less judicial methods.

Another situation is that in which hostilities continue in spite of the order to cease. It is then that might be brought into play a definition, in the true sense of the term, of the aggressor. I refer to the efforts made



as he said, could be rebutted and rendered null and void but notice that this rebuttal could itself be excluded by the voice of one however unimportant State. I fancy that nobody has officially advocated that plan since.

It has not yet been agreed, I repeat, that there shall in this connection be any international body at all. I ask my friends what body and whether it would be the Council, and, if so whether it would decide by a bare majority and, if not whether a two-thirds or three fourths majority would be required. I do not know which exactly is proposed and I can see objections to all these possibilities.

Then there is the question as to whether in your conventional definition you want provocation taken account of, or the psychological factor and whether you want to repress only unlawful aggression (that is, aggression in breach of a promise) or aggression as such. Far too many advocates I think, say "Cut out the psychological factor. Look merely at the facts."

In England, murder is not merely killing. Murder is killing with a certain state of mind, and I rather think that is the right point of view. If you are going to compare war to murder you should surely take account of the state of mind.

Any rendering precise of that which already exists in a vague form is either an enlargement, because it will exclude some of the narrower possible interpretations, or a restriction because it will exclude some of the wider possible interpretations.

I ask my friends. What are you asking for? Is it mere clarification of some existing renunciation? Or is it the substitution of a new renunciation of a wider scope? By all means, let us ask for this but let us then call it by its proper name.

Again, I ask, in whose interests is the defining going to be done? M. Politis hinted it was for the convenience of the unfortunate aggressor so that he may know just how far he may go. It is surely not for the sake of the unfortunate aggressor! Is it for the sake of world opinion? Or of some tribunal yet to be set up? Advocates should be clear on this point.

The last thing I want to say is that I do not at all agree with the notion M. Politis put forward that the whole question was one of Anglo-Saxon as against Continental mentality. Anglo-Saxon legislation is perfectly clear on points where it is wanted to be clear.

Are we agreed as to what it is we want to repress? Is it, for instance, simply the act of aggression, as somehow or other defined, or is it the aggressive war? Some may want to repress aggressive war.

Others may say: Do not look at the policy lying behind and leading up to the situation. Look only at the act at the crucial time." Let us not forget then that the main difficulty is not in getting a true definition but in agreeing on what it is that we desire to enshrine in a conventional definition.



## § 2. — SANCTIONS AND MEASURES OF MUTUAL ASSISTANCE

### A. — MEMORANDA

#### CANADA

(Canadian Institute of International Affairs)

#### MILITARY EFFECTIVENESS OF ECONOMIC SANCTIONS

by R A MACKAY

We seem to be driven to the conclusion that economic sanctions are in general a broken reed so far as their military effects are concerned. The absence of important States from the League to-day makes their application in any case doubtful. At best, there would be a considerable time-lag between the application of sanctions and their effects upon military operations. Against some States they promise to have little effect, except in a war in which the whole resources of the nation are thrown into the struggle, as in the Great War. And when an aggressor can widen his base of economic supplies by occupation of industrial, or mining, or agricultural areas, or by alliance, the military effect of economic sanctions might indeed be very long delayed. Of all types of sanctions, the munition boycott seems most promising, because of the relatively few States whose co-operation would be needed to enforce it, because of the dependence of many countries on outside sources of supply, and because of the relatively light burden, as compared with a complete trade boycott, it would place upon the States applying the boycott. Yet the sanction could scarcely be relied on to have any early effect or perhaps any appreciable effect against any of the more important armament-producing countries, and this now includes all the Great Powers and a number of smaller Powers as well.

The moral effect of sanctions is, of course, another matter. Undoubtedly, even such a minor sanction as a financial boycott would be a disturbing factor in the business life of any State against which it was applied. Undoubtedly, the stopping of raw materials would be also disturbing. And most disturbing of all would be the complete economic boycott. No Government at all in sympathy with the business sentiment of its people could treat cavalierly the prospect of any of these sanctions being applied. Whatever their probable military effects, the reasonable certainty that any of these sanctions would be applied would undoubtedly have a powerfully deterrent effect upon any would-be aggressor. The sudden loss of markets to its exporters, or the loss



of foreign credits, or the stoppage of raw materials would throw its internal economy so out of gear and introduce so many elements of uncertainty into its business life, that the great weight of business opinion, the most powerful class in most States might be expected to swing to the side of peace rather than aggression. But this is a moral restraint rather than a military restraint. And it is in preventing war through strengthening within the nation the moral restraint against aggression, rather than in stopping the aggressor once he has begun operations, that economic sanctions promise to be useful in the preservation of peace. But if they are to have even a moral effect, it would appear there must be reasonable certainty of their application.

### THE USE OF KEY MINERALS FOR PRESERVATION OF PEACE

by R. C. WALLACE (Rapporteur)

The inequality of the distribution of minerals is the basis of the considerations which are dealt with in this paper. It is impossible, as minerals are distributed, for any country now or at any future time to be independent of other countries with regard to the minerals which are needed for peace and for war. This dependence is one of the underlying factors in that feeling of insecurity which makes for war preparations, and ultimately for war. Can this feeling of insecurity be transformed into a sanction sufficiently powerful, if wisely used, to prevent acts of aggression, or, if acts of aggression have taken place, to localise their effects and to bring them to a speedy termination? Can mineral sanctions be invoked which may be sufficiently powerful to render unnecessary the use of military sanctions, and so prevent war? The question deserves consideration both in its technical and its political bearings.

Two viewpoints have been put forward. Sir Thomas Holland has suggested that there should be a codicil to the Pact of Paris, in which the nations who have renounced war as signatories to the Pact should further pledge themselves that in the event of war breaking out they would withhold from the aggressor all mineral supplies which would be needed for the prosecution of the war. A similar proposal has been made by Senator Capper to the Senate of the United States. The other proposal is of a different nature. It was made by Professor A. E. Zimmern in several of his public addresses recently in Canada. Based on the fact that there are a few minerals which, while not important in the aggregate in world trade, are essential for war purposes, the proposal was that the production of these minerals and their distribution to the countries of the world be regulated in accordance with the industrial needs of the various countries, under the guidance and control of an international body. The purpose would be to ensure that no stocking up for war purposes, and no undue manufacture for



war purposes, would be possible. A country would be crippled before it began an offensive.

These proposals demand careful analysis. They are reasonable approaches toward world peace, in that they interfere as little as possible with the industries of a peaceful world, and as much as possible with the industries of war. They are fundamentally different in one important point. The first proposal, that of an embargo, maintains the integrity of national sovereignty. The nations which sign the codicil to the Pact of Paris would of their own act withhold for the duration of the war such war minerals as they possessed from those nations which were responsible for the war. The nations would be free to sign, and consequently free to act. In the second proposal, that of a quota, there would be a delegation of national responsibilities to a controlling and regulating body. Such a body might be established by the League of Nations. It would have continuous and complete knowledge of the industrial needs of the world, and would be given power, by agreement, to impose from time to time the limits of production and distribution. Therein lies the difficulty. It is true that in the field of narcotics a similar arrangement has been made possible. The experience of the League of Nations has been, however, that it is less difficult to agree to relegate fields of responsibility to a committee of the League in the realm of health and social welfare than in the realm of power, where the sensitiveness is such that no progress has as yet been made. It is in that field that the issue will be staged.

The first proposal, that of the embargo, is simple in its operations. There is no necessity to enquire into the industrial or war needs of the combatant. From a country at war as an aggressor, all minerals are to be withheld by any producing country signatory to the pact. Sovereign States are fully competent to exercise this authority over the industrial life within their realms, and there would be no difficulty in enforcing the will of the State. There are, however, two difficulties of another order. It is not easy, and in any event it takes time, to name the aggressor. Any delay in establishing the embargo would be serious, and the only effective means of operation would be to exclude minerals from the whole warring zone, at least until the guilt was established. Further, it would be necessary that practically complete agreement among the nations signatory to the pact should be obtained, in order to establish an effective embargo. Subject to these conditions, the machinery of operation would involve no mechanical difficulties, and could function provided there was no lack of will on the part of the individual nations to check the trade across their boundaries. In other words, the functioning of the plan, from the point of view of machinery, depends only on the will of the individual nations signatory to the Pact of Paris. Given the will, it could be made complete. But though the machinery for enforcing an embargo is simple, the effectiveness of the threat of an embargo as a deterrent to war is not very



great, since the method of an embargo presupposes an unrestricted trade during times of peace, with full opportunity for any country to lay up stocks of minerals for the purposes of war. Advantage has been taken of that opportunity in the past and it will become a regular procedure in the future, if no hindrance is put in the way. Except in a long war the effect of the embargo would be seriously impaired by the greater preparations which nations would make before war broke out.

The essence of the second proposal, that of the quota, is that the restrictions be confined to the smallest possible number of minerals in order that the minimum interference with world trade be involved. It would be obviously unwise to restrict in any sense the trade in iron, copper, lead or zinc. These are metals which enter extensively into world trade, and represent a large part of the industrial life of any country. Until the world has reached the stage of complete international planning of world trade — if that stage is to come — it would not be possible to regulate the trade in the staple minerals which are the lifeblood of industry. The attempt to do so would hinder, rather than help the cause of peace. There are, however, a few minerals which are limited in quantity, very limited in distribution, small in the total mineral trade, but essential for peace and for war. They are confined to a relatively few countries. In this fact of the localisation of the areas involved there lies some hope of success in policies of restriction. To keep within the narrowest limits possible, one must include the ores of manganese, chromium, nickel, tungsten, vanadium and tin — the first five essential in the production of steel of various qualities, the last invaluable for general purposes. The distribution of these minerals, in their present production, can best be seen from the world production figures of 1931, the last year for which complete production figures are yet to hand.

Manganese ore (in tons)	India	537 844
	Brazil	142,731
	Egypt.	100 174
	Gold Coast	247 191
	South Africa	100,290

Total world production for 1930	3 600 000
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Chrome ore (in tons)	Southern Rhodesia	80,334
	New Caledonia	72,979
	Yugoslavia	56 238

Total world production	300,000
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Nickel ore (in tons)	Canada	29 315
	New Caledonia	3 800

Total world production	35,400
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Tungsten ore (in tons)	China . . . . .	2,970
	United States	1,254
	India . . .	2,248
. and for 1930 .	China . . .	6,736
	United States .	627
	India . . .	2,457
Vanadium ore (in tons)	Peru (not reported for the important producer)	
	South West Africa	4,602
Tin ore (in tons)	Federated Malay States.	51,250
	Bolivia . . .	31,138
	Netherlands East Indies	27,374
	Siam . . .	12,495
Total world production . . .		147,000

With the exception of manganese, which is fairly widely distributed, each of these minerals is so placed that its economic production under normal conditions can take place in only a few countries. What practical steps can be taken to regulate their production, and what effective results would follow?

The League of Nations has the machinery, and the expert knowledge, in its economic division, to obtain continuous data on the industrial needs of the various countries of the world in these minerals. It is also in a position to determine where other deposits can and might be exploited, if there were the pressure so to do. If a committee were set up, under the League, it should, to be effective, be clothed with the following powers. It should, after investigation and hearing, determine at regular intervals the amount of each mineral commodity in the list above specified which would be admitted into each country in the raw or manufactured state.

It would apportion to each producing country its production quota. As in no case, except that of the U S S R, is the Government concerned in the producing or manufacturing business, it would place on the individual Governments the responsibility of controlling production and imports into their respective countries according to the figures which the central body would lay down. With these powers, effectively enforced, it would maintain industrial life without impairment, and would prevent the direct utilisation of these minerals for purposes of preparation for war. There are, implicit in this jurisdiction, many sources of irritation between the Government and its industrials, between Governments, and against the directing body.

Any quota arrangements, for example, must be based on complete knowledge of industrial needs. There may be a disposition to question the figures which are supplied by the interested country, but an inquisitorial review of the figures by an outside authority may lead to hard



feeling and to rupture. The working out of the machinery for the control of narcotics will be carefully followed with interest in that connection. The statement of needs is made by the country concerned, and is practically accepted by the supervisory body subject to its right to question the figures. The responsibility of planning the industrial life of the world — for that is virtually what such a body would do if it should set the quotas on its own authority — is a responsibility which would not be undertaken lightly. We must take several steps in the direction of international responsibility before we will be prepared to admit this collective right.

We are faced then with the fundamental question which lies behind and beneath the quota plan. Is the direction in which the world is moving that of world planning? Do the indications point that way? If so, the quota proposal is sound because it is capable of accomplishment. If not, it may be an ideal, but must be dismissed from the stage of practical politics. There have been far reaching experiments in this field in the last fifteen years, both by industries and by Governments. The industrial undertakings have been international in type, and have been concerned with maintaining a reasonably satisfactory price for a commodity in the world market, through a system of limitation in output, apportioned among the producers. One thinks of the measures which have been taken with reference to copper, tin, potash, rubber, wheat, coffee, camphor. Governments have functioned directly indirectly or not at all. In rubber, for instance, the British Government restricted the exports, the price rose, and the United States Government protested. The Imperial Japanese Government establishes prices for camphor. On the other hand, the copper producers worked independently of Governments in their attempt to regulate production of copper, in order to stabilise prices. The cartel system in the coal mining industry in Germany was carried through by the industry but in close association with the Government. Within the State itself, the planning functions of governments have increased almost beyond recognition within the last fifteen years. In Russia, in Italy in Germany and in the United States the State has taken control and, where it does not possess, it directs industrial functions. There are indications that in other countries as well this process may go forward. We are to become accustomed to planning in our national industrial economies. Is there any probability that we may become accustomed as well to planning through governmental action, in the international field? The opinion of some of us is that we shall, and that the tentative explorations by Governments in world wheat control and in regulation of the narcotic drugs trade are significant of the future. If this is the correct interpretation of present day trends, our minds will gradually become accustomed to the necessity for plans on a world scale which will require international machinery both for devising policy and for carrying it into effect.



The policy of quotas determined by an international body may therefore not carry with itself in the future as serious psychological difficulties as it has carried in the past. If on economic grounds international planning becomes a necessity, psychological difficulties will disappear.

## CZECHOSLOVAKIA

(Prague School of Political Science)

### I COLLECTIVE TREATIES OF MUTUAL ASSISTANCE (*translation*)

by MICHEL ZIMMERMANN

Much more important from a legal standpoint are the collective treaties of mutual assistance, especially when they are concerned with the application of coercive measures *within* the given association or limited legal body. But it is neither theoretically nor practically necessary that the coercive measures be applied exclusively within such an association of States. The assistance in question may signify the support which the contracting parties guarantee one another mutually in case of an aggression by another State which is not itself a party to the contract. In that case, it is possible to speak of the *lateral powers* of the association in question, and such lateral powers have a legal character, for they concern an action within the framework of the Covenant of the League of Nations and of the Kellogg Pact. It is then possible to speak of an act of insurance against a possible criminal act; the contracting parties are not acting arbitrarily, they are merely defending themselves against a violation of the law.

As examples of such associations for the defence of peace with lateral powers, we may cite two new confederations of States: the Little Entente and the Balkan Entente. The organic statute of the Little Entente, signed February 16, 1933, at Geneva, proclaims the validity without time-limit of the bilateral treaties of mutual assistance concluded between Czechoslovakia, Yugoslavia and Rumania, and thus binds the member States of the Little Entente to the common defence of their territorial integrity as well as of their political independence. This undertaking is based on Article 10 of the Covenant of the League of Nations and should be binding on all the members of the League of Nations.

The pact of the Balkan Entente of February 8, 1934, has the same character, Article I of the pact reads: "Rumania, Greece, Turkey and Yugoslavia mutually guarantee the security of their Balkan frontiers." This guaranty does not mean that the contracting parties have bound themselves to *respect* one another's boundaries in their mutual relations. The duty assumed is broader than that: it is to see that those frontiers are respected and to provide mutual assistance in case of an aggression.



against their possessions by another Power. In the case of the Little Entente and of the Balkan Entente, we are in the presence of a legal phenomenon well known in the history of the Middle Ages. When the Central Power could not guarantee peace, the small principalities or the cities formed peace unions of their own, and thus a relative security reigned temporarily in certain regions of the Empire or of other European kingdoms.

*De lege ferenda*, a legal association to ensure security is more perfect when it is concerned with a coercive function *within* such a peace union.

Such is the character of the association set up by the Rhine Pact, which establishes a pacified region on the eastern frontiers of France and Belgium and on the western frontiers of Germany. The three States directly concerned, together with England and Italy guarantee the *status quo* on the Rhine. Germany and Belgium on the one hand, and France and Germany on the other, bind themselves reciprocally not to make any attack or invasion and not to resort to war in any case. In case of a violation of the undertakings thus assumed, the contracting parties bind themselves to give assistance to the victim of the aggression.

## 2. THE LITTLE ENTENTE AND COLLECTIVE SECURITY (*translation*)

The three States — Yugoslavia, Rumania and Czechoslovakia — which have formed, by means of bilateral treaties, the legal community known as the Little Entente, have given concrete expression, on a regional basis, to a principle of the new international law — the mutual guarantee of territorial integrity and of political independence. This precept, which was little more than a statement of principle in the international law of the pre war period, has become, in the legal system of the League of Nations, the corner-stone, the fundamental rule which obliges each State to respect the personal rights of every other State. It implies that each State recognises every other State as a member of the larger political community in which the States become parts of a whole subordinated to international law. In this way the irreconcilable antithesis within the international community — in which the subjective rights of the States and, in particular the right to liberty and existence could always be violated by the use of armed force — has been annulled by the definite recognition of the principle of mutual respect in the new international relations. The principle embodied in Article 10 of the Covenant was of vital importance for the States which were formed or which increased their territories in the Danube Basin. The long struggle for the emancipation of the oppressed nationalities was crowned with success after a period of subjection which had lasted for centuries. It is quite comprehensible that the three Danubian States should have had the same tendency to consolidate the new *status quo* which was at once revolutionary and constructive in



character Two points of view confronted one another at first. For Take Jönescu as well as for certain Polish statesmen, the policy envisaged consisted in a primarily political collaboration of the countries stretching from the Baltic to the Black Sea, — in the creation of a powerful cordon of all the States on the Western frontier of Soviet Russia Benès, on the contrary, had in mind a conception primarily legal in character, — a partial carrying out of the programme of the pacification of Europe in the framework of the League of Nations "We shall continue to work along this line," wrote Benès in 1924, "it is for that reason that all the pacts which we sign are drawn up in such terms as

- (1) not to contradict the spirit of the Covenant of the League of Nations,
- (2) to make possible the adhesion of other States,
- (3) to be able to serve as a step toward the general pact of guaranty and facilitate in the long run an increasing degree of disarmament "

The bilateral treaties — between Czechoslovakia and Yugoslavia in 1920, renewed in 1922, between Czechoslovakia and Rumania in 1921, between Yugoslavia and Rumania in 1921 — designate an unprovoked attack as a violation of the new legal order, and this language became particularly significant when the Kellogg Pact, forbidding resort to individual war — war as an instrument of national policy —, acquired the force of law for all the European States and hence for all the States which are neighbours of the Little Entente Since 1928, there exists a quasi-universal legal community which includes all particular international communities, thus the aggression or the attack of one State against another will always have the character of a violation of the precepts of positive law The problem is further clarified by the fact that the Covenant of the League of Nations proclaims by what means international conflicts are to be settled (Articles 12 and following) All the States which are neighbours of the Little Entente are Member States of the League of Nations, and thus an aggression becomes a violation of law of a special character From the standpoint of legislation, the Kellogg Pact is superior to the Covenant of the League of Nations and possesses an incontestable legal force, *simultaneously* with the Covenant Thus is resolved the first question of collective security is there in existence a higher legal system forbidding the use of individual violence, defending resort to war to compel the other party to yield to the demands of the aggressor? The cardinal point is the existence of the legally binding precept forbidding individual violence Once aggression has become an international crime, it may be repelled by force, for the organisation of collective coercion follows necessarily from the fact that the law has been violated

The Little Entente, since 1933 (cf the organic statute of February 16, 1933), possesses the character of a confederation of States It confirms the principles of the Kellogg Pact and of the Covenant of the League



of Nations it obliges the Member States to abstain from all unilateral political acts which is to say that an individual act of aggression is forbidden for what we have here is no longer a simple promise or a clause in a treaty of alliance, but a legal duty to conform to decisions taken in common. All political questions must be decided by the Permanent Council of the Little Entente, and the principle of national sovereignty is thus limited by the pact of union. These limitations imposed by the organic statute of the Little Entente, as well as by the Covenant of the League of Nations and by the Kellogg Pact, assume that the other States will similarly accomplish their duty in their relations with Yugoslavia, Rumania and Czechoslovakia.

## FRANCE

(Commission française de Coordination  
des Hautes Etudes Internationales)

### ECONOMIC AND FINANCIAL SANCTIONS AND ASSISTANCE IN CASE OF INTERNATIONAL CONFLICTS

by JEAN NAUDIN (*translation*)

If all the States of the world were members of the League and if their undertakings were always uniformly interpreted and executed to the letter, the international organism would find in the Covenant and in the later agreements conceived in the same spirit all the legal powers needed to make it a real international community within which the particular sovereignty of each State would give way to the collective interest of the world for the organisation and maintenance of peace.

But the Covenant of the League of Nations has not been signed by all the Powers and several of those which had joined have since withdrawn. The community is not universal. If it is true that the League may on occasion, enjoy the co-operation of this or that State which, although not a member would conform to certain of its decisions or recommendations, it cannot definitely count on such co-operation. Several nations including some of the largest, have the right, then, to continue their peaceful relations with aggressor countries and thus to aid them indirectly. Not to speak of the obstacles which they might place in the way of co-operative military measures, they would constitute a sort of free zone in which would be carried on operations of credit, storage exchange and transit of a sort which would tend to prolong the conflict. Unlike what happens in the case of strictly localised conflicts, the activities of their citizens would not serve the interests of all the belligerents alike. In all probability they would benefit



the isolated aggressor, whose resources they would complete, relatively more than the States which were attacked, since the latter would be aided by all the guarantors of the peace, and more than the guarantors themselves, since the combined forces of the latter would have less need of this aid

Thus the fact that several States are not or are no longer members of the League of Nations limits the scope and might complicate the application of the collective means contemplated for the repression of conflicts. This is the source of most of the theoretical and practical difficulties encountered. Because it is not absolutely applicable to every case, the mechanism of repression runs the risk of losing its energy, of operating to some extent without effect or with an effect different from the intended one, no matter what degree of technical perfection may be attained in its construction.

And technical perfection has not been achieved. The principle of international co-operation to combat an open conflict has indeed been stated as the corollary of the international obligation to ensure peace. Assistance and sanctions have been defined in general terms as the methods of execution of this principle, and have been accepted in this form by the majority of the States of the world. But no specific programme exists regarding the conditions, the methods nor the control of this execution. The means of preventing war have been sought more actively than the means of repressing it. No objection can be made to the logic of this choice, which has been necessary in the elaboration of the theory as well as in diplomatic activity. Article 16 of the Covenant of the League of Nations has remained the fundamental text concerning assistance and sanctions, and the later conventions have not added to it any really new elements. No practical application of it has been made with respect to the various conflicts which have arisen in the world since 1920 — conflicts which the League of Nations has endeavoured, sometimes with success, to settle by different means. No jurisprudence has grown up on this subject.

. Both Article 16 of the Covenant and the more recent projects provide that the *peaceful settlement* of the difference is to be sought first of all by the League of Nations, whether the conflict be threatening, imminent or even begun. The next step might be to set up *financial assistance*, under the terms of the Convention of 1930, in favour of those States alone which had signed that Convention and which conformed to the peaceful procedure. In the next place, an *economic and financial blockade* might be established against the belligerents which had violated the Covenant, or which, not being parties to the Covenant, had refused all proposals for peaceful settlement and which, for that reason, were considered the aggressors. Finally, this system of blockade would have as its complement a sort of *economic alliance*, more or less strict, which would ensure at the same time the co-ordination of the international



repression and the proper allotment of the burdens assumed for that purpose by each nation. These various operations are not simultaneous, and the degree of their effectiveness against war depends in consequence, on the length of the intervals elapsing between them. It was pointed out at the beginning of this paper that the mechanism for the repression of conflicts was not complete because several States have a right to abstain from participating in its operation. It is not automatic, either because it necessarily comes into play after inquiries, mediations and attempts at conciliation which themselves coincide not only with the period when there is danger of war but perhaps with war itself. Moreover, the repressive mechanism also implies a further series of negotiations without which it would be practically inapplicable.

To shorten the period allowed for efforts toward peaceful settlement would merely multiply the risks of armed conflict and would thus lead to a result contrary to the purpose in view.

From the point of view of the repressive action which may be necessary this period is indispensable to the international community in order to allow it to prepare a programme of intervention adapted to the local circumstances of the conflict, to identify the aggressor or aggressors, and finally to determine just how assistance and sanctions respectively would be applied if it should become necessary to resort to those measures. The slowness of the procedure looking to peaceful settlement seems, then, to offer advantages which outweigh the drawbacks which might be involved in allowing certain countries to profit by that slowness to procure goods to increase their means of production, to call in resources employed abroad, to obtain financial aid which would be useful in case of war, to conclude specific alliances, and thus to acquire a technical superiority which would make repression more difficult in case it should become necessary to resort to it against those countries.

The assistance contemplated by Article 16 of the Covenant of the League of Nations is not intended to furnish resources directly to the State which is attacked or to its defenders. The "mutual support" which these States promise one another in paragraph 3 refers rather to their co-operation in the application of sanctions and to the distribution among them of the expenses incurred thereby. The convention on financial assistance alone provides for granting aid to the State which is attacked, as a means of upholding its righteous cause, apart from any direct action against the aggressor.

The objections which have been formulated against financial assistance, considered by itself, can apparently be narrowed down to the two following points. (1) It is possible that certain States might seem momentarily to have a right to profit by the advantages of this system, although once the period of conciliation ended, they would have to be recognised as the aggressors. (2) Quite apart from the hypotheticals



just formulated, financial assistance might not be enough to ensure the success of the State attacked, far from shortening the conflict, it might prolong it. If it were to be the only means employed by the international community, and if it were to be used frequently, it might in certain cases turn out to be merely temporising of a vain and demoralising character, incapable of producing a decisive result. In other words, financial assistance, which affects the aggressor indirectly, must be seconded promptly, when necessary, by direct sanctions.

The seizure of property and of credits belonging to the aggressors, and the prohibition of the floating of loans for these countries or their nationals, appear to be the most effective means, not only of reinforcing financial assistance, but of providing it, for thus each of the States acting as guarantors of peace would be provided with resources to be devoted to the collective repression of the conflict, and thus also each of them would be enabled to turn the stream of available credits at least indirectly toward the markets of the countries which were being attacked, to the exclusion of all others. These measures would weaken the State guilty of the crime of war, they would reduce it to the necessity of having recourse exclusively to the aid of countries remaining neutral in the traditional sense of the term, and would thus expose it to the risk of losing to some extent the independence of its policy. The result might indeed, be prejudicial to the national interests or to the private interests of some State acting as a guarantor of peace. It is to be noted, however, that each of the latter would be free to participate in the common enterprise according to its capacities. Special treaties might adapt their general undertakings to the conditions imposed on them by their geographical situation, their own resources and their traditional policies. Finally, their sacrifices would permit them to profit by the international compensation provided for by Article 16 of the Covenant.

All things considered, the burdens imposed by the financial embargo as thus defined appear less heavy than those of the economic embargo. Financial repression, if vigorously conducted, might in certain cases make economic repression unnecessary, for it would deprive the common adversary of the means of purchasing the armaments and supplies of all sorts necessary to carry on war. The demand for goods and services would become so small that it would be unnecessary to prohibit the corresponding supply. The natural law of the economy of effort, which applies, as experience proves, to all policies of international co-operation, even the most sincere and the most disinterested, would thereby be satisfied, for financial straits would render the aggressor impotent without the champions of peace being obliged to employ all their resources. Prudence requires, however, looking beyond financial sanctions to economic ones, for the two are complementary and each is conditioned by the other.

What is to be understood by economic sanctions? They should consist in a triple system: an absolute prohibition of all exchanges with



and competitive armaments which characterise the Balance of Power system.

### *Character and Purpose of Sanctions*

If British (and American) opinion is to be enlisted in support of the principle of sanctions, it is important that the function of coercion in the collective system should not be unduly extended. The purpose of the sanctions of Article 16 it seems fair to say was to prevent, and in the last resort to stop resort to war in breach of the peace keeping obligations of the Covenant. In addition, Article 13 paragraph 4, contemplates a certain pressure being employed, on the recommendation of the League Council, in the improbable event of a State submitting to arbitration or judicial decision and then refusing to carry out the award. The Covenant does not contemplate the use of sanctions for *punitive* purposes or as a means of imposing a victor's terms on a defeated enemy: the sanctions are for the purpose of stopping violence with the minimum loss and injury so that the peace system can again operate properly. And there is no provision which authorises resort to war against a passive but recalcitrant State, or which empowers the League to use sanctions simply as a means of enforcing its own decisions when no resort to war has been committed.

.. The writer suggests that the conference, in dealing with these questions, should consider these two principles

(a) that the purpose of the League's sanctions is to prevent, and if necessary to stop, recourse to force in breach of the covenants of peace — not to impose the League's political decisions

(b) that in each case in which sanctions have to be employed, the sanctions should be so chosen as to inflict the *minimum of lasting injury* compatible with the prompt stoppage of the peace-breaking

## OBSTACLES TO COLLECTIVE SECURITY

by G. M. GATHORNE HARDY

... An effective system of collective security should be restricted to meeting a common danger, of which all its members may reasonably be assumed to be conscious. In any other event, there will in fact be no collective action, for each nation will reserve its right to decide upon the merits of intervention in each case as it arises.

A perception of this difficulty has driven some countries to the opposite extreme of forming local defensive pacts based on the *self-interest* of the parties. But, however carefully such agreements may be expressed to be "within the framework of the Covenant," they appear on analysis to be alien to the whole spirit of collective security. This danger was clearly foreseen by President Wilson, when he laid down, as the third of his Five Particulars, that there can be no leagues



or alliances or special covenants and understandings within the general and common family of the League of Nations " If the system theoretically in force is too wide, these substitutes are much too narrow They are in fact a reversion to the system previously in vogue, which "collective security" was designed to supplant We may in fact have to fall back on such arrangements if collective security proves on examination to be an unrealisable ideal, but the two things should not be confused The sectional interests on which such pacts are based are by no means necessarily identical with the general maintenance of peace The security at which their signatories aim is not so much security of peace as security of tenure, and to preserve this they will be, and in fact have been, prepared to resort to the usual expedients of "power diplomacy" Even assertions of mutual guarantee, such as those of Locarno, cannot readily be accepted at their face value They are entered into, for the most part, because the principal parties in their hearts believe that aggression can come from one quarter only In spite of Locarno, it is probable that the world would see with some surprise the spectacle of some of its signatories coming to the assistance of Germany in the event of French aggression

If the signatories of a local pact have any interest in the issue of a dispute, apart from its peaceful settlement, they inevitably tend, or will be suspected of tending, to degenerate into partisans, forming a solid *bloc* for all purposes, which may even be opposed to the general desires of the community, and their local pact "within the framework" will be interpreted as an entente or alliance of the pre-War type, and will provoke a counter-combination on the first opportunity

## REGIONAL SECURITY AND THE WORLD COLLECTIVE SYSTEM

by H V HODSON

Experience has taught us that so long as certain nations at heart continue to regard war as an instrument of national policy, even so long as some nations fear war, not as a vague evil overhanging society but as a definite possibility from a specified quarter, a worldwide League of Nations is not enough Even the membership of the United States and other absent Powers would not overcome this difficulty A solution that appears plausible at first sight is that of an international police force It has the appeal of universality, while at the same time it gives specific security without "automatically" pledging anyone to war except the police force itself But if we try to make it fit the data more narrowly we perceive that it has very grave shortcomings. If the establishment of the international police force is to allow the countries that demand more specific security to disarm, it must be at least as strong, and as certain in their defence, as are now their own armed forces, together with those of their allies That is



to say if the international force is in any substantial measure to replace, and not merely to surmount, national armaments, it must be stronger than any possible combination of armed forces that is to-day feared by the security-demanding Powers. Not merely would its creation, maintenance and use present enormous practical difficulties the very existence of such a concentration of military power would alienate that other group of countries which asks of the collective system, not guaranteed allies in resistance to expected aggression, but an assurance that there will be no more war. If the British Dominions, as typical of this group are to-day reluctant to pledge themselves to "automatic" military commitments, still less would they be willing to contribute men or money towards a martial organisation which would presumably be used "automatically" at the behest of the League Council or some other international committee.

The far better type of solution seems to be that of regional security arrangements within the framework of the general collective system. The Locarno Treaties may be cited as an illuminating case in point. In the first place, while Great Britain refused to give special guarantees for the eastern frontiers of Germany she did give such guarantees for the western frontiers, not merely as a contribution to general European pacification, but also because her own regional security system depends on the maintenance of the existing balance on the English Channel. In the second place, the attitude adopted by the Dominions is highly instructive. They took no part in the negotiation of the Locarno Pact, they did not sign it then or subsequently they were explicitly excluded from the commitments that it embodied. The western frontiers and the Channel are not part of *their* regional security systems. On the other hand, at the subsequent Imperial Conference of 1926 they congratulated H. M. Government in Great Britain on its share in this successful contribution towards the promotion of the peace of the world.

The essential terms of the relation between the local security systems and the world collective system are these

(a) That no specific obligation undertaken by any Power should conflict with its general obligations under the world collective system.

(b) That the local security arrangements should fulfil the principle of mutuality (which is vital to the collective system) and should not be directed against any excluded Power.

(c) That the machinery of the world collective system should be used, within the regional system, to settle disputes by peaceful means, to ascertain the facts in the event of a conflict, and to name the aggressor.

(d) That members of the collective system outside the regional group while not pledged to any specific action in the event of a conflict therein, should be prepared to endorse the regional arrangement in accordance with the terms of their general undertakings — e.g. by instituting an arms embargo or an economic blockade by refusing to recognise the conquests or other fruits of war or if need be and if they so decided, by actually applying military sanctions.

(e) That disarmament, which is essential to the eventual success of the collective system, should be achieved on the basis and if possible as part of each regional pact.



Possible fields for the establishment of such regional security systems would include

(a) Western Europe, comprising France, Germany, Belgium and Great Britain This system already exists in the shape of the Locarno guarantee pact, though it is lacking in important particulars

(b) North-Eastern Europe, comprising Germany, Poland, the U S S R, the Baltic States and Czechoslovakia The inclusion of France would destroy the regional character of the system and give it, in German eyes, the semblance of *Einkeisung*

(c) Central Europe, comprising Germany, Austria, Hungary, Czechoslovakia, Yugoslavia and Italy The core of this system would be, of course, the preservation of the integrity of Austria

(d) The Balkans and South-Eastern Europe The nucleus of this system exists in the Balkan Pact, but it plainly ought to be comprehensive, from Hungary to Turkey

(e) The Mediterranean and the Adriatic, comprising France, Italy, Yugoslavia, Greece, Spain and Turkey Great Britain would, of course, have a special relation towards this system, and might indeed form part of it, at least so far as concerns certain specific contingencies

(f) South America Towards this system the United States would likewise have a special relation

(g) The Pacific and the Far East, comprising Japan, China, the United States and the British Empire

## SANCTIONS AS A FACTOR IN COLLECTIVE SECURITY

by ARNOLD D MCNAIR

To sum up, my feeling is that, so long as it seemed that the military sanction might possibly or probably be applied in defence of a collective peace system, insufficient attention was given to the organization of the other sanctions Now that the military sanction has receded into the background (whether permanently or not remains to be seen), an attempt might usefully be made to organize the other sanctions I say this in spite of the fact that they are likely to involve breaches of the law of neutrality — even the Convention on Financial Assistance of 1930 would do that But I think a reasonable prerequisite of their application is the creation of an express reciprocal guarantee of armed force in aid of any co-operating State singled out for retaliation Granted such a guarantee, I believe that public opinion might be prepared to run a risk and subscribe to a collective scheme of non-military sanctions But the sooner the statesmen of democratic countries give up the idea of direct, non-regional, military sanctions the better, for the people whom they have got to carry with them have given it up It is not so much that people are unwilling to run a risk for the purpose of securing a peace system It is rather that they are not satisfied that their Governments have undergone a genuine change of heart and have unreservedly embraced the new conception of the legitimate sphere of the use of armed force



## SANCTIONS

Summary of a Memorandum submitted  
by a Study Group of the Royal Institute of International Affairs

*(The Memorandum from which extracts are printed below was the first part of a provisional draft prepared as a basis of discussion. It must not be considered as necessarily expressing the views of the Study Group.)*

Sanctions are measures taken in support of law. It is the essence of law that its sanctions are collective, applied with and by the general authority not by any individual. Moreover, they are deliberate, and applied only after due enquiry and judgment by a competent authority. Violence enters into them but rarely and only in circumstances that are clearly defined and so far as it does, it is discriminate and deliberate, applied only to criminals proved guilty of crimes for which violent punishment is prescribed.

Circumstances may arise, indeed, in which violent action is necessary in order to ensure that law-breaking shall be dealt with in due course of law. The violent action then taken is commonly called police action, and it is governed by certain clearly defined principles. Its sole object must be to suppress disorder and ensure that the peaceable and orderly process of law shall prevail. It must not be indiscriminate, so that it strikes those who are neither taking part in, nor abetting, the disorder against which it is directed. It must not be punitive, arrogating to itself functions which may only be exercised with the authority of, and after due enquiry by a competent court. And it must not be vindictive, so as to leave behind it feelings of resentment, or grievance against injustice.

The authority and strength of police action derives from its impartiality from its direction against all disturbers of the peace alike, from its being an assurance that justice and right shall prevail and not mere material strength.

We shall examine first the various forms of international sanctions that are available, and the probable effect and efficacy of each in varying circumstances. We do not here touch upon the question of by what authority the application of sanctions is to be decreed or the machinery through which that authority is to work.

A convenient order is to arrange sanctions in ascending order of severity but this order is for the convenience of analysis only and more must not be read into it.

*Moral Sanctions*

Public opinion alone is a powerful sanction for the reign of law in international affairs. Nations, as distinct from their Governments are usually sensitive to moral condemnation by foreigners only so far



as they themselves recognise it to be justified. But moral condemnation has some material and economic effect too, automatic rather than calculated. Many countries derive no little economic advantage from the visits of foreign tourists, and most countries nowadays take considerable pains to attract them. Credit, too, depends on confidence. If a nation has dishonoured its obligations, or even if it is generally adjudged abroad to have done so, in any respect, not in financial or economic matters alone, the general confidence in its Government's *bona fides* is shaken and its credit is thereby damaged.

The influence of these results of the moral sanction is, however, not very strong, and it would seem unfortunately that the sensitiveness of Governments to opinion abroad arises chiefly from the fear that it may be the parent of material opposition. Governments have means of manipulating opinion at home, of moulding it, or at least of suppressing so much of it as is adverse to their policy or actions. And a Government determined on aggression which is secure of support at home, whether from real national conviction or because it feels strong enough to suppress even the expression of disapproval, is very likely to flout reprobation abroad, if it is confident that the latter will not develop into adverse action that may hinder the policy that calls it forth.

The ideal to be aimed at is, presumably, the state of international society in which the only sanctions, necessary to maintain the reign of law, shall be moral. Such ideal conditions are unlikely to be reached except from long habit, and unfortunately the world's habit in its international relations has been the exact opposite. The moral sanction for the reign of law in international affairs, therefore, in the present state of the world's habits, must be reinforced by material sanctions. Diplomacy plays its part in mobilising the moral sanction, in giving it expression, and in bringing it into action. So far as more concrete measures are possible and effective as sanctions, diplomacy may render their actual enforcement unnecessary by conveying a warning of their imminent use. But if the moral sanction is ineffective, diplomacy cannot reinforce it, and unless concrete sanctions really are imminent, the warnings of diplomacy are futile.

### *Financial Sanctions*

A State which embarks upon war has need to preserve carefully such of its economic life as war leaves to it. Any measure by foreign Powers, which hampers that branch of its national activities, increases its difficulties and inconveniences, and to that extent should have a certain efficacy as a sanction.

The purely financial measures open to a Government which desires to put pressure upon another State, consist in the denial of all financial assistance, or even facilities, to the offending Government or its nationals. Such measures have the advantage that they can be applied



easily speedily and with the least widespread repercussion in the country applying them.

Foreign long-term loans in which a home Government has a direct concern are rare. To guarantee a loan for a foreign Government is an exceptional proceeding for any Government. Apart from such loans foreign Government loans can only be floated in any capital with Government consent. The possibility of long-term loans thus could be cut off with the greatest ease. The same applies in great measure to short-term banking credits, which can be suspended at any time on the instructions of the Central Banks.

But the efficacy of financial sanctions, unless combined with other economic measures is limited. The prevention of secret borrowing — through an intermediary — or of the acquisition of credit, through trade operations is practically impossible. The sanctions may be further weakened through the effects of retaliation by the State on which they are imposed.

The States upon which the denial of foreign financial facilities is likely to inflict inconvenience or difficulty are those who have come to the end of their own resources. If so, they have probably already raised loans abroad and are indebted to foreign creditors. They thus have at hand the financial weapon of repudiation, wherewith to retaliate against any financial sanctions imposed upon them. It might even be that the immediate saving to their finances arising from repudiation of foreign liabilities would compensate them for a time for the loss of further financial facilities abroad but hardly for long.

One important feature of financial sanctions should be noted — of themselves they cannot be preventive. Interference with the normal flow of commerce and business, except of such trades as are in themselves harmful like the international drug traffic, is only justifiable if cause of it has arisen. It will not otherwise be tolerated, or command general assent.

The converse of imposing financial sanctions upon a law breaking State, is the granting of financial assistance to the States which may be sufferers by the act. There is no doubt that, even for a Great Power the effect of the prospect of having the financial backing of the world in a case of war would be by no means negligible.

For smaller Powers, the influence of the world's financial backing would be even greater and would make itself felt earlier. But in the case of calculated aggression, it might not prove an effective deterrent if the aggressor counted upon obtaining the fruits of his attack quickly. By secret and ample preparation, he might count on succeeding in his attack, and presenting the world with a *fait accompli* without being under the necessity of himself seeking financial aid abroad, and before foreign financial aid could sufficiently augment the resources of his victim to prevent that result.



*Embargoes on Arms and Munitions*

Breaches of the rule of law in international affairs may take many forms, but amongst the most flagrant and most damaging to the world in general is the "resort to war," in contravention of the Kellogg Pact or the Covenant of the League of Nations. With this may conveniently be bracketed unmistakable preparation for that particular breach, such as would be indicated by contravention of a treaty for the limitation of armaments, like the Washington Treaty No. 1 of 1922, or the general Disarmament Convention which it is the aim of the Disarmament Conference to produce. An appropriate sanction for either of those breaches would be deprivation of the essential means of making war — arms, munitions, and other war material.

Deprivation, however, can only be imposed from without so far as the offender does not possess stocks, or the resources for producing them. The most that other nations can do is to cut off the further supply of them from abroad by the imposition of embargoes. To estimate the efficacy of this measure as a sanction, it is necessary to enquire into the demand for war materials, and their supply, as between different States.

In 1930, 55 per cent. of the total world exports of munitions of war came from three countries — Great Britain, France and the United States.

Only the larger States can supply all their internal armament needs even in time of peace. There is therefore a possible market for war material in most of the smaller countries of Europe, nearly all South America, in Africa, and the greater part of Asia.

Twenty-five countries possess State-owned arsenals or dockyards for the manufacture of war material of one kind or another. Only Great Britain, the United States, France and perhaps Soviet Russia possess factories capable of large-scale production of all kinds of heavy guns, ships-of-war and artillery ammunition. Even these countries (excluding Russia) depend largely upon private industry for much of their supply. The remaining countries depend almost entirely upon private industry and upon imports from abroad. So that a very large proportion of the countries of the world is dependent for its supply of armaments upon the private industry of four or five industrial States.

States thus fall obviously into two categories of self-sufficiency in the matter of armament supply — a few possess full resources, but the large majority possess little or none. Against the latter, an embargo on the supply of war material would make it impossible for them to carry on a war for more than a limited period. The stocks of munitions and armaments normally carried by nations in time of peace are only a fraction of their requirements once they are engaged in hostilities.

No doubt in non-producing countries, those stocks are larger in proportion than in those countries which are capable of manufacturing



their own further supplies, but even so they cannot last for very long once war has started.

As against a fully industrialised State, on the other hand, an embargo on the supply of war materials from abroad would be little more than an inconvenience. Its effect would not, however, be negligible. In the late war even Great Britain and France, two of the countries possessing the largest capacity in the world for the production of war material found it necessary to supplement their own supplies by purchases from the United States very shortly after the outbreak of war. There is no doubt that Germany would have done the same if it had been in fact possible for her to draw upon that source of supply but the fact that she was able to carry on war for over four years on a colossal scale proves that the lack of foreign supplies has little immediate influence on the capacity of a highly organised industrial country to wage war. In the end, it was the Powers to which the resources of the world were open which were victorious against those to which they were closed but it is not justifiable to attribute that result to their comparative resources in war material alone. The most that can be concluded is that in war no Power is completely indifferent to foreign supplies of war material but that the effect of an embargo varies enormously according to the industrial capacity of the Power against which it is imposed.

The imposition of an effective embargo on the supply of war materials from abroad implies the existence of a very complete international organisation for the purpose. To be effective at all, it must be worldwide and watertight. Leakage will destroy its efficacy. It must be enforced by all States, not alone by those by whom war materials are manufactured, for unless it is, there is no guarantee that munitions will not reach the State from which it is desired to exclude them, by a circuitous route.<sup>1</sup>

To fulfil this condition of completeness, it is not necessary for the world to wait until all Governments, without exception, have reached the standard of efficiency and probity of the most highly civilised. But it is necessary that the Governments of the arms-exporting countries should be of that standard (as indeed they are) and that the international authority organising the general embargo (whatever it may be) should have means of informing itself as to the strictness with which it is being carried out. If it were found that there was leakage to the offending State from any other the embargo would have to be extended also to the latter. Leakage might occur with the connivance of the Government of the latter State, or through its inability to control smugglers using its territory or shipping. In either case, means of detecting

<sup>1</sup> "Under present conditions there is, apparently nothing to prevent one disputant supplying another with arms. China in recent years has bought increasing amounts of armaments from Japan which in 1930 supplied China with no less than 37.5 per cent. of her total arms imports." (*International Traffic in Arms in Foreign Policy Reports* Vol. IX No. 12. Foreign Policy Association, Inc. New York)



leakage would be needed, and extension of the embargo to the leaky State would be justified

The effect of an embargo on the export of war material in the country imposing it is not in itself widespread. It is confined to loss of the prospective profits of the firms which, but for it, would have supplied the material. But those firms, if few in number, are strong in financial interest. The Government imposing the embargo must be prepared for opposition, and must be strong enough to withstand it.

From the above discussion the conclusions are that the imposition of an embargo on the supply of war material from abroad presents no great difficulties of organisation, and need have no great repercussion in the countries imposing it. To be effective at all against the continuance of law-breaking in the form of resort to war or breach of a convention for the limitation of armaments, it must be universal, and steps must be taken to ensure that any leakage is promptly detected and stopped. Even if those conditions are fulfilled, it is only efficacious when directed against the less highly industrialised States; it is ineffective against those which themselves possess appreciable resources for the production of war material. But it is worthy of remark that the former category of States is much larger than the latter, so that the fact of its not being of universal efficacy is no reason for discarding it from the armoury of sanctions. If complete, and against the States vulnerable to its operation, it should bring unpremeditated hostilities to an end within a comparatively short time, and that time is likely to be shorter if it is possible to determine which of the antagonists is the aggressor, and to apply the embargo to him alone, leaving the innocent party free to obtain supplies where he will. For the latter measure would weight the scale so heavily against the aggressor, particularly if combined with the financial sanctions discussed in the last chapter, as to make it exceedingly difficult for aggressive war to succeed. To that extent, the combination of the two measures may act as a deterrent to aggression or similar law-breaking.

The arms embargo, however, will not suffice against deliberate international law-breaking, for which ample preparation has been made.

### *Embargoes on Raw Materials Essential to the Production of Arms and Munitions*

While self-sufficiency in the production of war materials depends upon industrialisation, it depends equally upon the supply of the raw materials out of which arms, munitions and engines of war are manufactured. It is, therefore, worthy of investigation whether an extension of the embargo from materials of war themselves to the raw materials out of which they are manufactured, will bring even the industrialised countries within its controlling influence.



If the forecasts of experts may be accepted the requirements per head of petroleum or liquid fuel of other sorts, will be greater in the future than in the past, as will be those of steel. The armies will need at least as much mechanical transport as they did in the late war, if not more, while the mechanised striking forces will certainly need far more. For other essential raw materials, it is more difficult to estimate, but it seems probable that consumption would not exceed that of the late war. But even so the actual wastage of iron and steel products used in war is less than that of those materials — such as constituents of explosives and gases — which are entirely dissipated in their employment and worn-out ferrous materials are largely recoverable for further use as raw material. The weak point in protracted war like operations will be the supply of chemicals, of the minor non-ferrous metals, and of such materials as rubber and cellulose.

Besides estimating the total amounts needed in war it is necessary to examine the extent to which war time needs exceed or fall short of the ordinary peace time supplies. Any country which is normally dependent upon imported materials can be expected to carry in reserve several months supply of those materials. Depending upon season, prices, trade relations and the kind of commodity this period may even be considerably longer. Some States possess an active war industry consisting of naval dockyards, building yards, aircraft establishments, powder mills, arsenals, and cartridge factories. In these the State manufactures its own war material, land and sea armaments, munitions, airplanes, vehicles and equipment. Such organisations amass stocks and reserves in time of peace in order to be prepared for possible conflict. There are also private firms which in time of peace divide their productive activities between civilian and military requirements and which on the outbreak of war can devote themselves entirely to the provision of war supplies. Such firms also possess stocks of raw materials in reserve, or will have access to the sources of supplies of other firms normally producing non-military commodities. All civil iron and steel works, too, shipyards, motor factories, machine workshops and railway factories normally carry for peace time purposes stocks of material which can be used in time of war. Similarly the chemical industry uses in peace time large quantities of material necessary for the manufacture of munitions.

A large number of products thus serve the needs both of civil commerce and of war. Most of these products are made in peace time in large quantities so that a nation, which possesses powerful metallurgical, chemical, and electrical industries, will be able to call up a great deal of material with which to supply its forces.

If therefore, the needs of war did not increase requirements per head very greatly military requirements could be met for a considerable period by drawing upon supplies from normal commercial reserves. On the other hand, if the military needs call for any raw material or its



manufactured product at a rate per head greater than the peace-time rate, the existing stocks will not serve the army for long without the most severe rationing of civilian uses

All the Great Powers are deficient in a number of raw materials. But three Powers stand out as being deficient in only a few of the major materials and as being self-sufficient in most of their war necessities. These Powers are the United States of America, the British Empire, and Soviet Russia. It seems therefore safe to say that even a fairly complete embargo on raw materials enforced against any one of the three Powers noted above, would have very little effect in bringing military operations to an end through the creation of a shortage of raw materials. The remaining Powers are seriously handicapped by deficiencies in a long list of materials. Alone of the Great Powers, the British Empire has resources of tin, nickel, and rubber — materials in which the United States of America would be especially deficient in war-time. The only States self-sufficient with regard to petroleum are the United States of America, Russia and Poland.

The handicap in war of these deficiencies of normal times may be offset by several circumstances. An aggressor State may obtain supplies of which it is deficient from the territory of which it acquires control by conquest or occupation. Sources of supply not sufficiently rich to be economically worked in peace in face of the competition of foreign producers working richer deposits, may be reopened by a belligerent cut off from foreign supplies. Salvage, too, is an important source of supply which may be tapped under the stress of enforced shortage, as is the synthetic or other production of substitutes. And lastly, domestic supplies of all kinds may be requisitioned and devoted to the service of armies. These mitigating influences, however, except the first, can have but a minor influence in any but a short campaign. They are palliatives only, not cures, of the shortage that brings them into existence. Moreover, the fortune of war, or of nature, may work in the opposite direction.

It is clear that the difficulties of an aggressor State would certainly be increased by an effective embargo upon the supply of a few raw materials, and the fact that they are so few indicates that the measure could be enforced by the rest of the world with no great interference with its normal trade. An embargo against an aggressor only, connotes free supply to the victim of aggression, and the increased war-time demands of the latter should make up at least for the cessation of supply to the former. Dislocation of business would undoubtedly occur, but not in a prohibitive degree.

What is not clear at all is whether the aggressor's difficulties so created would be sufficiently serious to bring aggression to an end. The most that can be claimed with certainty for the embargo on raw materials as an effective sanction is that it would make aggression more difficult, and would make it impossible, for any State except the British



Empire, to carry on a prolonged war without colossal previous preparation. It thus possesses efficacy against a number of States which would not be seriously affected by an embargo merely upon actual war material. But against none would it be effective to prevent or arrest a calculated attack for which full preparation had been made, and which was expected and intended to succeed in a short period.

### *The International Boycott*

Though some of the measures hitherto examined might be sufficient, in certain circumstances, to cause law breaking (in the international sense) to cease, none of them are of universal efficacy in that respect. For that purpose it requires sanctions of more power than those hitherto considered, and more general in their application. One such sanction is that prescribed by Art. XVI of the Covenant of the League of Nations for application to a member State which resorts to war in disregard of various other provisions of the Covenant.

By that Article, all other member States undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking State, and the prevention of all financial commercial or personal intercourse between the nationals of the Covenant-breaking State, and the nationals of any other State, whether a Member of the League or not." This it will be seen, is a much more complete measure than any of those hitherto considered. Indeed, it includes them all, and adds to them the stoppage of all international trade and finance, not those in warlike material alone, and the cessation even of intercourse.

As against the less highly developed States, its efficacy would obviously be even greater than the financial or arms embargoes, and would almost certainly be sufficient to deal with any form of law breaking. The economic life of such States is built upon the export of primary products. If that export were cut off, the mechanism by which much of the population earns its daily subsistence would be dislocated.

The sanction should have a large measure of efficacy too against the highly industrialised States, which are incapable of control by less comprehensive embargoes. The economic life of highly developed States is based upon an intricate organisation of independent industries, both import and export. The sudden cessation of both imports and exports would throw all these out of gear and the whole nation would have to be reorganised on a basis of home trade alone.

Moreover apart from the mere difficulties arising from industrial dislocation there is an even greater one. Industrialisation in most countries has been accompanied by the decline of agriculture. Not only is the population attracted from the land into the factories but



the development of export of industrial products has made possible the import of foodstuffs from abroad which are cheaper than can be produced at home. These influences have combined to produce a population larger than the country can itself feed from its own resources.

To-day, the seven most powerful industrial States fall into four groups, of differing degrees of self-sufficiency.

The United States of America, Russia and Poland are independent of outside food supplies or are so slightly dependent that a food blockade would mean little to them. The next group consists of the Japanese Empire, and France, which, although partly dependent, could do without foreign supplies for a considerable period. In the third class Germany and Italy each import a fifth of their food supplies. Italy, which imports over a quarter of its grain consumption and has relatively few cattle, is far from being self-supporting. The position of Germany has not changed greatly since the War and the results of the blockade (which did not become fully effective in its application till 1916), are well enough known. Most dependent of all is Great Britain which relies on outside sources for more than half its food supplies. The position of Britain in conditions of complete isolation — *i.e.* if sea communication with her Dominions were cut off — would be similar to the position of Belgium under the German occupation.

There is thus no country invulnerable to the complete boycott, applied to itself but not to the victim of its attack, if such there be.

The great efficacy of this measure as a Sanction invites close examination of what action its enforcement entails. The prevention of all intercourse, even personal, involves

- (a) the complete closing of land frontiers, even to mails, in either direction,
- (b) the severance of telegraphic communication, and the refusal to reply to or acknowledge radio communication,
- (c) exclusion of the shipping and aircraft belonging to the boycotted State from the harbours and airports of all other States
- (d) the prohibition and prevention of the shipping of all other States from entering the harbours of the boycotted State,
- (e) the prevention of all illicit communication, by land, sea, or air,
- (f) if the wording of Art. XVI of the Covenant were to be carried out to the letter, it would apparently involve either the segregation or the repatriation of all nationals of the boycotted State who happened to be in other countries
- (g) the withdrawal of all diplomatic and consular officers on both sides

The enforcement of these measures is a matter of varying difficulty. (a) the closing of frontiers, presents few administrative difficulties so far as road and rail communication is concerned. That is merely a matter of frontier posts, which already exist on most frontiers. (b) the severance of telegraphic communication involves no difficulty whatever. (c) the exclusion of the shipping of the boycotted State from the harbours of other States is a simple matter.

On the other hand (d) the prohibition and prevention of the shipping of all other States from entering the harbours of the boycotted State,



may be a large task. Smuggling inwards by sea is by no means the negligible matter that smuggling across a land frontier is. A single ship of no great size can carry thousands of tons of cargo and since the rewards of success would be large, there would be a great temptation to the adventurous the avaricious and the unscrupulous of all nations to attempt it. Refusal of clearance for the boycotted State's ports would not be efficacious against them, any more than the refusal of Canadian clearances to cargoes of alcohol for United States ports in the days of Prohibition were efficacious in preventing liquor reaching the United States shores. Blockade would be necessary.

Blockade, to be effective, would be expensive, since every part of the coast on which it is possible to land would have to be kept under observation. Except on ports where facilities for landing cargoes in bulk exist, the watch need not be incessant. It would have to be sufficient to ensure that the operation of smuggling on the open coast was made so difficult and costly that it was reduced to negligible dimensions. But the closing of ports from without is a laborious and expensive operation.

It would be necessary for naval forces to establish a constant patrol of every boycotted port, whose duty would be to stop all egress and ingress. That in itself presents little difficulty though the patrol must be prepared to use force against any blockade-runner that refuses to obey orders. But if the blockaded State does not acquiesce peaceably in the operations of the patrol, very different considerations arise. The patrol can no longer be close in to the harbour entrance, working economically with the minimum number of blockaders. If the blockaded State treats their presence and operations as an act of war and fires on them from land fortifications, they must move farther out, and their numbers must be increased if the blockade is still to be complete. And, if not content with fire from the shore, the blockaded State attacks the blockaders with submarines or other naval force — for which action it would easily find excuse if the blockaders had occasion to use force to stop blockade runners — the blockading force must move still farther away it must again be increased in size, and its operations become indistinguishable by any known criterion from those of war.

The possibility of this development must be faced. It would be futile to relax the strictness of the blockade merely because its enforcement provoked forcible opposition. To do so would be largely to nullify the effects of the boycott by leaving it seriously incomplete. It is not to be supposed that the boycott would be lightly undertaken on the contrary it would only be enforced to deal with a grave situation when its use was essential to the general well-being. Once put into force it must be carried through with thoroughness and determination in knowledge of the liabilities incurred by those enforcing it. One of those is the liability to find their naval forces, at least, involved in war.



With regard to (e), the prevention of illicit communication by land and sea has already been considered, the prevention of that by air presents a more difficult problem. In bulk and importance it stands midway between the other two methods. A freight-carrying plane can convey some tons of cargo, and a natural frontier, such as a river or a range of mountains, is no more a barrier to it than an artificial frontier. Aerial blockade is not practicable. The only means of preventing communication by air with the country under boycott is a very strict supervision of all civil aviation in other countries within aerial range. This exists to a certain extent to-day, but if the temptations to aerial smuggling were vastly increased, as they would be in the circumstances envisaged, the organisation to prevent it would have to be correspondingly strengthened.

Heading (f) need not be considered at length. Its enforcement would add nothing to the efficacy of the measure as a whole, it would be needlessly exasperating, and would obviously invite reprisals of the same sort.

(g) the withdrawal on both sides of embassies and consuls would leave the enforcing State with no means of communication with the Government of the boycotted State. Special arrangements would therefore be necessary for notifying to the boycotted Government any further action of other Governments, or for the former to indicate submission, defiance, or anything else to the latter.

Provided the Governments of all States possess the necessary legal powers to enforce the domestic measures described above, there is no great difficulty in putting them into execution. The naval action entailed is indeed the only extra-domestic measure. That is a duty which cannot be shared equally between the enforcing States, since only some of them possess the necessary naval forces, but that need not necessarily be a serious obstacle to the use of the boycott. The burden of the other measures too would fall unequally, and would naturally be heavier on those States possessing a common frontier with the offender than on others. But apart from the action of enforcing the boycott, there is the burden of its repercussions in the enforcing States to be considered. In any one of these States it will be serious, and very unequal in its incidence on individuals.

There must be two parties to intercourse, and if intercourse is severed, the rupture may be just as damaging to one as to the other. The damaging effect of rupture falls in the first instance upon individuals, and for every individual in a boycotted State who feels the effect of it, there is his fellow in one of the enforcing States affected in equal measure.

There is nothing new in this. The state of affairs in the commercial sphere between an enforcing State and the boycotted State is precisely parallel to that to-day between two States at war with one another.

In the absence of sanctions which shall prevent war, or at least shorten



its duration if it should occur, all States to-day have the prospect of having to deal with such a situation when they shall next find themselves involved in war. The difficulty is not abolished by refusing to make use of the boycott as a sanction, for it at once reappears in the inevitable result of discarding the one widely effective sanction that this investigation has so far revealed. Although it is serious, it will have in any case to be faced, and it provides no valid cause for rejecting the boycott as an international Sanction.

It has been pointed out that the burden of enforcing the boycott falls more heavily upon contiguous States than upon those more distant. The contiguous States too are more exposed to reprisals particularly if they are weak, and the offending State is strong.

Weak States should not be subjected to the liability merely because, through no fault of their own, they happen to be neighbours of a powerful aggressor. It might be necessary to excuse them from applying the full rigour of the boycott on their own behalf, but if so rationing arrangements, such as those instituted by the Allies in the late war would have to be made to ensure that the leakage should not detract from the efficacy of the boycott as a whole.

### *Military<sup>1</sup> Sanctions*

Economic measures can go no farther than the complete boycott, and it has been shewn that the enforcement of that measure may involve the enforcing States in military operations by sea, at least, if not by land.

Law-breaking, in the form of "resort to war," is not infrequently the outcome of hot blood, or national excitement. Once war has actually begun in such circumstances there is always reluctance to discontinue it. If successes have been gained, it is felt that to stop the war is to give up without adequate reason what has been won by national sacrifice. If reverses have been suffered, it is urged that the national honour must be retrieved. In either case, war is much more difficult to stop than to start, and by the time economic sanctions succeed in stopping it much damage and suffering may have been sustained by the State which is the victim of aggression. Thus even if a system of economic sanctions were fully established, and universal confidence reigned that it would be put into force promptly whenever occasion arose, a feeling of insecurity between States, similar in kind if not in intensity to that which exists to-day would still in all probability persist. To deal with this contingency the world has only one resource — to employ overwhelming force to bring to an end the private use of force by an individual State. To use military force collectively against an individual breaker of the peace, not as a partisan but in order to bring violence to an end and ensure judicial settlement of the dispute

<sup>1</sup> The word "military" has been used to cover all forms of warlike operations, by sea, land, and air



that called it into action, is, indeed, a way of escape from the rule of force. Even those most opposed to the use of force in any circumstances may agree that its collective organisation, and actual use when need arises to suppress its indiscriminate and irresponsible use by individual States, should diminish the frequency with which it is employed at all, and should lessen the damage and suffering that result from it

The use of armed force by collective authority, and on collective behalf, may be organised in several different ways. One of them would be the establishment of an International Armed Force, such as has been much advocated for instance by Lord Davies and the New Commonwealth organisation. This project, which at first sight seems attractive and logical, certainly presents many difficulties, about the importance of which opinion is sharply divided. For example, the difficulty presented by the cost of such a force is met by its advocates with the argument that, when there is an International Force in being which can guarantee all States against aggression by others, national armed forces may then be reduced, in size and equipment, to the level of police forces, leaving the complete equipment of arms — tanks, artillery, and the like — to the International Force alone, which then need not be of unwieldy dimensions. To this, opponents of the scheme reply that States will not reduce their armed forces until they are assured of security, so that the creation of the International Force must precede any sensible reductions in national forces. It must not only be created, but it must command confidence.

Apart from action by an International Force maintained for the purpose of applying the military sanction when occasion arises, there is the method of an International Force assembled for the purpose, consisting of contingents from various States. So far as those contingents are of different arms, e.g. a naval force from one State, a military force from another, no great difficulties arise. But if either the land or sea contingents are drawn from more than one State, the question of command may give rise to difficulties. Unless there is a clearly defined common interest between the enforcing countries, and unless there is a commonly accepted military figure of outstanding ability, the necessities of unified command may be questioned by the States contributing quotas of men. Wellington in 1815 was unquestioned as Generalissimo as long as all countries were frightened by Napoleon's escape from Elba. But his command was not so readily accepted after Waterloo. Foch was not appointed Generalissimo until after the armistice, though he had acted as Generalissimo since the March-April debacle. Until there is such a crisis that nations can be led to see the importance of unified command and unless there exists such an outstanding military figure that statesmen will look to him rather than to their own generals, the system will be bound to be one of co-operation between forces rather than combination of forces.



In either case, if the history of alliances in war may be taken as a guide, jealousy and lack of mutual confidence is likely to be manifested.

This consideration has a bearing too upon the strength of contingents required. A homogeneous force under single command is always stronger in war than a force numerically equal but consisting of contingents of different nationalities each under its own commander. Moreover in the present temper of the world, men are more inclined to fight well if they believe themselves to be defending their homes and country than if they believe that they are fighting in somebody else's cause.

The International Force created *ad hoc* and composed of contingents from various States would be unlikely to be available for instant action. There would be a danger that each State contributing a contingent would be disposed to wait for others to act, and would delay despatching its own contribution until it was quite sure that it would not be thrown into the fight without proper support owing to the non-arrival of its fellows. This is a very real danger, since experience shows that the organisation of any action common to a number of independent States is generally a slow process.

A third method of applying military sanctions to a law breaker would be to entrust their execution to a single Power. This would avoid the difficulties of a conflict of loyalties, and of the divided command, and indeed most of the other difficulties inherent in the methods hitherto examined. The Power selected must obviously be one which is geographically situated so as to be capable of rapid and effective action. On other grounds, too, such Powers are the most suitable. They are obviously most intimately affected by disturbance of the peace in their own vicinity and have an individual interest in bringing it to an end. Moreover they have special interests in regions adjoining their own territory which they would probably be prepared to defend even in the present state of affairs. In many cases they are indeed already bound to do so by treaty — such as the British guarantee of the independence of Belgium — or, in the Western Hemisphere, by the Monroe Doctrine which appears to be recognised by the world as, in effect, having the force of a treaty. The tendency to-day manifested to multiply regional pacts designed to provide against aggression in various parts of the world is evidence that this method is recognised as being the most practicable of all those hitherto discussed.

Regional pacts such as the Locarno Treaty proceed on the assumption that the States called upon to act under them will do so because it is in their own interest to do so that they will, in effect, be acting in defence of their own vital interests.

The chief points contained in this draft may be summarised as follows



(a) That international sanctions are, essentially, two only — the economic sanction and the military sanction. The complete boycott which includes all lesser economic measures, is the only one of universal efficacy

(b) That the economic sanction inevitably causes economic repercussion in the States enforcing it, and is liable to involve some of them in partial military operations (*i.e.* by sea)<sup>1</sup>

(c) That the economic sanction, *provided that all States without any serious exception co-operate in enforcing it*, will undoubtedly make the way of the aggressor so hard that his aggression will not be worth while, but that its effect may not be immediate

(d) That in the meanwhile determined or insensate aggression may do so much harm to its victim that, unless the military sanction is also available if needed, nations are unlikely to feel a sufficient sense of security to trust the collective system, and therefore to work it loyally

(e) That the military sanction, being needed only as "first aid," must, if it is to be effective, be capable of *immediate* application

(f) That there are serious difficulties in the way of organising any form of International Force for that purpose, which shall be both acceptable, and capable, of *immediate* "first aid" to a victim of aggression, without some reorganisation of international society. But that the system of regional pacts, whereby "first aid," if required, will be rendered by States who are not only best placed to give it but are also interested parties, offers a method of meeting the possible need for the military sanction which is not only practicable, but is actually being increasingly utilised to-day. To graft this system on to a universal system of sanctions needs no more than the organisation of financial and economic assistance

There is, that is to say, no serious obstacle, amounting to impossibility or impracticability, to the establishment of a system of international society which shall establish the rule of law as between nations, and maintain it. There are obstacles, and they are real obstacles, for if there were not, there can be little doubt that some such system would have been established before now

## POLAND

(Central Committee of Polish Institutions of Political Science)

### RELATION OF COLLECTIVE PACTS TO LIMITED PACTS AND TO PSEUDO-GENERAL PACTS

by ANTONI DERYNG (*translation*)

Collective pacts are pacts which, by reason of the number of the contracting parties, extend beyond the limits of a single continent, which are general in character, and which, because of the nature of the relations with which they deal, are of value for international law as a whole. These pacts cannot easily change the traditional principles

<sup>1</sup> There is of course a possibility that military aggression — *i.e.* war — may be extended by the aggressor to *any* other State, besides the original victim of it. That however is not peculiar to a system of international organisation which includes sanctions. It is always present



of international law for since that law is customary in character it does not easily admit of modification by means of conventions. The rules laid down by collective pacts do not ordinarily therefore depart widely from the general rules fixed by custom. If it nevertheless happens that they are opposed to the ordinary rules and that they tend to create new ones, without justification for such creation in the state of international relations, it is clear that they run the risk of not being applied or of undergoing an interpretation which deviates from the intention of their authors.

Since the principle of unanimity governs the handling of international relations, collective pacts are always more difficult to conclude than limited pacts and especially bilateral pacts. A collective pact must give due weight to the interests of all the countries of the world, to their various combinations, to the diversity of legal doctrines and even of habits and this fact often leads to unforeseen results.

The undertakings which these pacts involve will therefore often be ill-defined and even sometimes in practice impossible to perform. States hardly like to break engagements which they have contracted so they prefer to contract only engagements whose application is fairly elastic. It follows that such engagements are more harmful than helpful to the countries which contract them. For while, in appearance, they are legal in character analysis reveals that they are merely expressions of good intentions. Thus it happens that multilateral pacts soon turn out to be of no practical importance. If they are not modified, it is because frank modification would be too eloquent a confession one prefers to bury them without ceremony. It often happens, moreover, that they are implicitly changed by the contracting of new obligations of narrower scope. It may be added that the manifold interplay of interests and of doctrines prevents these pacts from being drafted with sufficient legal precision.

In fact, multilateral pacts need to be defined by limited pacts. That is why they include clauses intended to obviate all difficulties of interpretation arising out of a possible contradiction between a limited pact and a general one. Article 21 of the Covenant of the League of Nations, for example declares that international engagements such as arbitration treaties and regional understandings such as the Monroe Doctrine, which ensure the maintenance of peace in a certain part of the world, are not incompatible with the provisions of the Covenant. As to Article 20, it abrogates all obligations and understandings among the Members which are inconsistent with the terms of the Covenant, and binds the Members of the League to abstain in the future from entering into such engagements. These articles are noteworthy because they formulate a method for removing the conflicts which might exist between the different obligations of a State.

Difficulties of interpretation increase in direct proportion to

1) the lack of precision of the convention,



- 2) the time elapsed between the conclusion of two or more conventions,
- 3) the number of contracting parties,
- 4) the number of unilateral restrictions,
- 5) the number of original contracting parties and of parties who have adhered later

These difficulties are much greater than in domestic law, and they surpass even those which arise from the conflict which sometimes exists between the rules contained in a single treaty

It is often specified in the treaties which supplement a principal treaty that their provisions involve no modification of the engagements previously contracted. This clause might be taken as the basis for the construction of what may be called the theory of the presumption of concordance. We find an example in paragraph 3 of the German-Polish declaration of January 26, 1934

"In addition, each of the Governments declares that the international engagements which it has contracted heretofore with regard to third parties are not an obstacle to the peaceful development of their reciprocal relations, do not conflict with the present declaration and are not affected by it."

The presumption of concordance of two international conventions does not exclude the possibility of conflict between their respective provisions. But these provisions must be interpreted in harmony with the letter of the general treaty and with that of the limited treaty as well.

It seems that three auxiliary principles might be formulated in this connection

If a limited treaty contains the clause of concordance, it must be interpreted with reference to a general treaty in such a way that (1) all provisions which may be *praeter legem* remain in force, but (2) those which would be *contra legem* are limited in their signification by the rules received in the general treaty, finally (3) the interpretation adopted must always be that which is favourable to peace. Between a general treaty and a later bilateral treaty, it is a mistake to look for contradictions under the pretext that the former is less specific than the second in its provisions concerning the maintenance of peace. If the Covenant of the League of Nations, for example, still admits war in certain cases, it is a mistake to consider it as in contradiction with the Kellogg Pact, which outlaws war. The possibility that difficulties of interpretation may arise in connection with the application of sanctions does not invalidate the principle which we have just stated.

We must not forget, moreover, the legal advantages of general pacts. They create a moral and legal atmosphere favourable to the conclusion of particular pacts, they tend to give an orientation to the policy of the different States, finally, by reason of the interdependence of States, peace can be maintained only by the parallel functioning of general pacts and



bilateral pacts. In addition, general pacts make it possible to transcend the limits of regional pacts, whose sphere of action does not include all the territories in which a world war might begin.

A distinction must be made between collective pacts and regional pacts between two or more contracting parties. The purpose of the latter is to promote peace within a limited region. They are concluded between two or more States whose territories are contiguous or whose interests are bound together (Little Entente) or again, whose interests may be opposed under certain conditions. Like collective pacts particular pacts may deal with forms and methods for the peaceful settlement of international conflicts (treaties of arbitration, clauses regarding the competence of the Permanent Court of International Justice) or with security (pacts of non aggression, defensive alliances) or again, they may aim at an economic or cultural rapprochement.

A distinction must also be drawn between limited pacts which have as their object the regulation of a class of interests which are organically connected, and which for this reason, take their place in the body of world-wide international relations, and the pseudo-general pacts which arise out of the convergence or divergence of States which claim to have universal interests. The latter are based on the false principle that certain States having universal interests, have a right to interfere with authority in the regional relations of other States. If politics authorise such pacts they are entirely unjustifiable from the standpoint of the organisation of peace. If peace be broken at any given point, the resulting war may easily spread throughout a continent and even throughout the whole world, and may consequently involve States whose sphere of interests is quite limited. Pseudo-general pacts hinder the co-ordination of the work of organisation of the international community and violate the principle of the equality of the States and that of the universality of the interest of all in the maintenance of peace.

The relations between the interests of a particular State and those of a regional group of States, and between the interests of a particular State and those of the maintenance of world peace form a very complex problem. The coexistence of States within the international community has made it possible to form a conception of the general interest which transcends the particular interests of the members of that community. But this conception has not attained its full development, because of the looseness of the organisation of the international community. This looseness makes the subordination of individual interests to collective interests difficult or even impossible. It is sometimes claimed that international law serves primarily and perhaps exclusively the particular interests of the States. But the development of international relations, the economic interdependence of the States, the complex character of political relations, the interest which everyone has in the maintenance of peace, — facts which determine the immense



development of international law —, determine also the growth of the ideal of the collective interest. This tendency sets some limits to the selfishness of the States, but there is still lacking an objective criterion which would make it possible to define this collective interest. It too often appears, and nowhere more than in international affairs, that this interest is identified with the interest of the strongest<sup>1</sup>

### *Outline of a Doctrine of the Organisation of Peace*

International relations are clearly in need of rules and at the same time of institutions to facilitate the application of those rules. In a community so extensive and composed of members having such diversified interests as the international community, the development of law and of legal institutions depends on the collaboration of all the members. Regional pacts are the expression of the desire of the members of the international community not only as a group, but as individual States, to establish peace in the world. It is also to be noted in this connection that the advantage of bilateral pacts is that the engagements which they formulate are more concrete and easier to carry out than those formulated in general pacts. It is evidently easier to contract engagements toward States with which the chances of conflict of interests are practically non-existent, but it is also of less practical importance. It is the task of neighbour States to contribute effectively to the organisation of peace, since it is from friction between their interests that may arise dangers to the peace of the world. It would be a mistake to place on the same level accords which are likely to remain platonic because of the distance separating the States which have entered into them and accords which, on the contrary, are concluded between two neighbouring States, between which, because they are neighbours, there is greater likelihood of friction. If international law, like public law in general, is an emanation of social life, it appears that limited treaties and especially bilateral treaties, correspond more closely than the others to the requirements of that life.

We are now in a position to try to set forth the principles on the basis of which peace may be preserved. These principles are deduced from certain general postulates and from certain specific situations which have been given expression in the two bilateral pacts concluded by Poland.

(1) *Principle of the general character of the interest in the preservation of peace.* This principle carries with it the elimination, juridically speaking, of the distinction between Powers having world-wide interests and those whose interests are limited, — first of all, because this distinction rests

<sup>1</sup> Deryng, *The Principal Tendencies in the Evolution of International Law* (in Polish), p. 13



upon no rigorous criterion. It is not only useless it is harmful to the organisation of peace. Any violation of peace anywhere may lead to a general war and may therefore do violence to the interest which even a small State may have and really does have in the preservation of peace. This principle follows from the principle of rigorous equality among States. Furthermore, this general interest can be safeguarded only by a system of organisation embracing the whole of the international community. Whence the necessity of giving specific application to the general pact by means of limited and bilateral pacts.

(2) *Principle of the personal immutability* of States. Any attempt to consolidate the international order should proceed from fixed and unshakable definitions. A rigorous distinction must be made between disputes which arise in connection with relations between States, and aggressions against the "personality" of a State. This personality is composed of three elements: the Government of the State, its territory and its population. Any peaceful agreement which provides for the settlement of past or future disputes should respect the personality of the contracting Powers, which is the necessary condition of the agreement. This is a condition *sine qua non* of the existence of the international community of international law and of such agreements themselves. No territorial claim, no movement tending to deprive a State of its independence can be the object of a peaceful procedure. The principle of the personality of States is the unconditional basis of all treaties. This principle is formulated in Article 15 of the Covenant of the League of Nations which concerns the matters which lie within the exclusive jurisdiction of the respective States, and again in the reservations made with reference to self-defence in connection with the signing of the Kellogg Pact. Similarly the third paragraph of the German-Polish Declaration already cited contains the following statement:

Further the two Governments affirm that the present declaration does not concern questions which, according to international law must be considered as belonging exclusively to the domestic affairs of the two States."

Again, the convention concerning the determination of the aggressor states in paragraph 5 that

every State has the same right to independence, to security to the defence of its territory and to the free development of its institutions.

The annex to this same convention states, under point A that no act of aggression can be justified by

"the internal situation of a State, for example, by its political, economic or social structure by the alleged deficiencies of its administration by the disturbances which may be caused within it by strikes revolutions counter revolutions or civil wars."



(3) *Principle of making engagements concrete*. The relation between limited pacts and general pacts consists, among other things, in the fact that limited pacts, being closer to reality, are able to determine more concrete engagement, which, since they give expression to a conciliation of interests, are of great value for the peace of the world. On the other hand, general pacts create an atmosphere favourable to the stabilisation of peace and to the conclusion of bilateral pacts.

(4) *Principle of the exclusion of the negative precedent*. Multilateral pacts, by reason of their lack of precision, the number of the contracting parties and the difficulties of interpretation which they involve, are likely to be violated, thus weakening their authority and constitutes a precedent which endangers peace. We need only recall, in this connection, the difficulties encountered when attempts were made to involve the Kellogg Pact as a weapon against war in the Far East or in South America. The violation of a general pact by one of the contracting parties creates a precedent, and the importance of precedent in international law is well known. In this case, the precedent is negative and serves to hinder the development of law.

(5) *Principle of the mutability of the rule of law*. A rule of law tends to lose in effectiveness when it is too often repeated in connection with change in political conditions. An engagement tends to lose in effectiveness when it is renewed in a modified form although, in its original form, it has not ceased to remain in force. To modify an undertaking amounts to a declaration that the undertaking was not originally entered into in good faith. The rule of law, resting upon the idea of right and of duty, is independent, so far as its substance is concerned, of the form in which it is expressed. It should be added that it is a mistake to resort to law to settle situations which are not yet ripe for such settlement or which, by their very nature, do not lend themselves to such settlement. There are fields of international relations which are not governed by positive law and which are left to the principles of justice and of equity.

It is evident that the problem of peace is extremely complicated. It depends not only on the goodwill of the States and of statesmen, but also on the development of international relations. But whatever difficulties, whatever disappointments even may stand in the way of the idea of peace, we must maintain unshaken our faith that this idea will conquer, thanks to the joint efforts of the theory and the practice of international law.



## RUMANIA

(Rumanian Social Institut e)

## MUTUAL ASSISTANCE, SANCTIONS AND REGIONAL AGREEMENTS

by R. MIRTANI (*translation*)

Let us consider first of all the Treaty of Mutual Assistance. The cause of its rejection is not to be sought in the fact that it provided for regional accords. We think, on the contrary that this fact constituted the best, perhaps the only guaranty offered by that treaty. Thus we are faced with the problem of regional accords concluded within the League of Nations. Are they contrary to the universal character of the League? Would they hinder its normal functioning? Such are the two questions which must be answered.

In the form in which they were contemplated in the Treaty of Mutual Assistance, regional accords possessed the advantage of providing for an action more prompt than that of the League of Nations. The whole action could be completed in less time than the Council would require for the making of the necessary decisions. We do not see in this circumstance anything contrary to the essential nature of the League. On the contrary this system appeared to be fairly flexible, certainly much handier than the general guaranty offered by this same treaty. In any case, the treaty was rejected by the various States for reasons of a very general character, the examination of which leads to the conclusion that the guaranty set up was far too complicated. If greater stress had been laid upon particular accords, if less liberty had been left to the Council in the determination of the aggressor and the fixing of the contingents for intervention, the treaty would have been viable. Consequently the objection was not due to the mention of regional accords (though it is true that the Italian delegates to the League of Nations showed themselves decidedly lukewarm toward such accords).

The question takes on an entirely different aspect in connection with the Rhine Pact. The procedure here is simple and clear. The rôle assigned to the Council can by no means be interpreted as apt to retard or render more difficult the application of the guaranty. Particularly important is the fact that it is impossible to distinguish any lack of agreement in the interests of the signatory States. The same observations can be made likewise with respect to the Little Entente, the Balkan Pact and the Baltic Pact. This is enough, we think, to prove the vitality of the system, as well as the services which it can render if the need arises.

Why is this not the case in South America? Because in our opinion, the conception of the regional accord has in that instance been somewhat distorted. The fact is that an accord signed by all the States of South



America or by the majority of them is not a regional accord but a continental accord, and therefore more or less general in character. In comparison with the universality of the League of Nations, any accord which groups the States located in a certain part of the world wears, no doubt, a regional aspect. But that is not enough. In Asia, for example, neighbouring States have widely divergent interests. It follows necessarily that to consider an understanding as regional merely because it concerns an area which can be viewed from the geographical standpoint as a region is to neglect reality for an abstraction. This is one of the underlying reasons which have prevented the application of the Washington treaties in the question of Manchuria. In the same way is to be explained the failure of the South American accords. All these agreements were regional only in name. In point of fact, they brought together States having very different interests. For a regional accord really to deserve that name, and in particular for it to be viable, it must apply to a limited region and not to a continent. It must be concluded by States having a certain interest — and an identical interest — in this particular region, and not by a large number of States having opposing interests or no interest at all. If regional accords of the type of Locarno, of the Little Entente, or of the Central American accord will always be viable, it is because they conform to all these conditions. If these essentials are neglected, the result is certain failure.

That is why — to take up another aspect of the problem — we do not feel justified in recommending the participation in agreements of this nature of States which are not directly interested. The advantage derived from the more or less complete impartiality with which they would examine the situation would be largely offset by numerous drawbacks, such as lack of understanding of certain vital interests, difficulties in regard to transport, etc.

If such is the character which is to be attributed to regional accords, if such are their advantages, care must be taken not to exaggerate their importance. By that we mean that it is impossible to establish an absolute rule in this matter, which is certainly open to exceptions. Cases are by no means improbable in which the peaceful intervention of the contracting parties, on the basis of a regional accord, would have no result whatever. It is for this reason that their advantages must be considered primarily from the positive viewpoint of the value of the effective assistance which is furnished on the basis of these accords. It is quite possible that, under certain circumstances, a general agreement might produce better results than a regional accord. The boundary between the respective value of the two systems is quite uncertain and very difficult to trace. That value may be said to depend primarily on the political atmosphere and on the particular interests of each point of the globe. We believe, however, that for the present the superiority of regional accords over universal agreements is sufficiently demonstrated.



## B — DISCUSSION

*The Conference took up the question of sanctions and measures of mutual assistance at its Fourth Study Meeting in the afternoon of June 5th*

*Mr Allen W DULLES was in the chair*

*After a brief statement by the General Rapporteur Mr ESCOTT REID was called upon to speak*

Mr ESCOTT REID Canadian Institute of International Affairs

The first question which I think we might consider is, should the effectiveness of Articles X and XVI of the Covenant be increased only to the same extent as Article XIX? In other words do we accept the principle enunciated this morning<sup>1</sup> that collective security and collective justice must be accepted together? Professor de La Pradelle pointed out yesterday<sup>2</sup> that Articles X and XIX were inextricably tied together. The weakness of one has involved the weakness of the other. Similarly it would seem that the strengthening of the one must involve the strengthening of the other.

The second question which I should like to pose is this. Should an increase in the effectiveness of international sanctions be conditional upon a substantial reduction and limitation of armaments, and, if so how drastic a reduction should be made?

The third question to which I should like to direct your attention is this. There is general agreement that if you abolish offensive armaments, if you internationalise civil aviation, if you establish an international air force in order to prevent an aggressor nation from seizing the civil air force within its borders, you create conditions in which an economic boycott may by itself be able to prevent success in most wars. If that is correct, the important thing for us to do is to discuss ways in which the economic boycott may be made effective. What then are some of the more important ways in which the economic boycott can be organized?

In conclusion, I should like to mention the question of regional agreements. Are regional agreements to be fitted into the framework of the collective system? The answer is that they must be fitted in, because the premiums which nations pay in a collective system must be at least roughly proportionate to the risks which they bear. The premiums must be proportionate to the insecurity of the nation concerned. As far as North America is concerned, the official opinion in military circles in both Washington and Ottawa seems to be that North America to-day is 100% secure against attack. Therefore, it would be impossible to obtain from North America the same premium in a collective system that you might obtain from the nations on the Continent of Europe. Regional agreements must therefore be fitted into a collective system.

<sup>1</sup> See above p. 281

<sup>2</sup> See above p. 255



The question arises, of course, how they can be fitted in. There is only this one point, which I would like to raise, namely that a regional security agreement can only be fitted into the collective system of security if the determination of the aggressor is left to an international organ and is not left to the individual States which are members of the regional pact. Otherwise, of course, the ridiculous situation will arise that the members of a regional pact will themselves determine which State is the aggressor and may come to the assistance of a State which they deem to be the aggressor and which is declared a week or so later by the international authority to be the innocent State.

These are the three or four questions which I think we might discuss this afternoon.

Professor HENRI HAUSER, Commission Française de Coordination des Hautes Etudes Internationales (*translation*)

After listening to the excellent summary of our distinguished General Rapporteur and after reading the memorandum of Chatham House, I wondered whether it was worth while for me to take part in the discussion. But the question of sanctions is, in reality, the fundamental question in this debate.

.. It has been stated — the point has been excellently dealt with in the memorandum of Chatham House — that it was not necessary to proceed at once to the ultimate sanctions which served for the establishment of our national societies, that is, to the use of force, and economic sanctions have been invoked. Then, superimposed on this already complicated mechanism, our Canadian colleague proposes the establishment of another still more complicated mechanism, which contemplates the intervention of actuaries to determine the premium to be paid — for the preservation of collective security — by each of the nations which make up the collectivity, the international community.

An historian and an economist myself, I ought to be a partisan of such a system. No one is more convinced than I of the importance of the economic causes of war in the world to-day. But when we make up our minds to step outside of systems and mechanisms, we perceive that all the economic sanctions which have been imagined — refusal of credits, refusal of the raw materials necessary for making war, refusal to deliver even foodstuffs and garments — may influence a conflict when the nation involved is a small one. But this body of sanctions has already, over a period of years, proved ineffective when the nation involved was powerful and well organised and when that nation had reasons — good or bad — for risking a conflict.

The study of economic sanctions reminds one of children playing on the sea-shore, building sand-castles and then waiting for the tide to sweep them away. Besides that, they involve a terrible contradiction. If they are to be effective, they strike first of all the innocent, the people



who need food and clothing in the State which is presumed to have violated the Covenant. In that case, we should see again, as we have seen in the past, the stirring of a natural feeling in the very people who are trying to secure obedience to the Covenant. Pity would be universally felt at the spectacle of these people deprived of fats, these children dying of hunger. We should reckon up as we have done before, the number of colonies which they lack because of the blockade.

The result of this natural pity is that the conditions and the severity of the blockade are relaxed. We have known cases of this sort, even before the war but especially during it.

.. We must keep then, to the conclusion which, intellectually I was pleased to find in the memorandum of Chatham House, namely that the only effective safeguard of collective security the only threat capable of ensuring it, is the certainty for the State which violates the Covenant that it will bring down upon it the forces of all the other States. As long as a State can say to itself "If I make war they will denounce me before the universal conscience, they will sign protocols but they will not send their troops against my troops." peace will not cease to recede before our eyes. The worst danger for peace is to say that never, in any case will we make war.

Captain LIDDELL-HART British Co-ordinating Committee for International Studies

The possibilities of air attack are widely recognised to-day in most countries, although not very clearly estimated. Undoubtedly popular opinion tends to exaggerate them whilst technical opinion tends to minimise them. This is shown by the statesmen to-day who still go on talking in terms of numbers, of overwhelming force and size of armaments. The novel aspects of land invasion have been missed by the public. The crux of the problem is whether attack can succeed.

The question there turns on the basic condition of land warfare to-day and that lies in the power of the defence which is now stronger actually much stronger than the power of attack. That condition has been in development for the last seventy years.

The question that we have to come to next is, how can that superiority be overcome? It can be overcome by manoeuvre through mobility if there is room enough or by overwhelming force. That does not depend upon numbers of troops to-day it depends on having a large enough quantity of the weapons that can overcome defence, that is above all having heavy guns heavy tanks, and so on. The change of conditions tends to emphasise the increasing ratio of advantage enjoyed by defence, and as a result the attacker now has got to resort to surprise. That is the only way certainly the most important way in which results can be gained. He can count on what one may call the material unexpectedness of new devices.



In the realm of technical surprise, there is nothing serious that I see at present on the horizon. Gas is talked about a lot, but we are told by chemical experts that there is no sign of a new development in gas at the moment. The most valuable form of gas — mustard gas — is one that may end the defence more than the attack.

The most dangerous form of new device that I can see is what I may call atom-bomb, — the use of mole on a large scale, can one classify it critical for offensive weapons? Undoubtedly most certainly, but also have been offensive, in the sense that they inflict injury.

The other form of surprise which may be attained to-day is by the time of the attack — mental unexpectedness. Defence is now so superior to attack that, unless the defence is caught unaware, the attack is likely to fail. The prospect of attack diminishes once the initial surprise is over.

I will try and sum up what that leads to. Unless a decisive advantage is gained in the first days of invasion, and perhaps even in the first hours, the defensive is likely to be firmer than it has ever been, and the offensive is likely to be paralysed.

Bearing on the question we are examining to-day, what are the consequences of this new condition, or this finally developed condition, of the superiority of the defence? First, that if it is realised, it may discourage aggression. Second, that it may force any would-be aggressor to concentrate his efforts far more than in the past on obtaining an overwhelming success in the first days or hours of attack. Many people do not realise that in 1914 a whole fortnight elapsed after mobilisation before the main moves of the armies began. Anything before that was preliminary. Now, to have any chance in the future, those main moves must begin within a matter of hours. That truth, as I find in travelling round Europe, is gradually coming to be perceived by the General Staffs. They are beginning to re-adapt their plans accordingly and the whole organization of their armies. It is producing an entirely new conception of land warfare.

While the general effect of these new conditions on land is certainly in favour of the aggressor, it certainly is going to complicate the problem of lending effective assistance to any invaded country. It makes timely reinforcement much more difficult, because it needs a speedy decision (to go to the help of the invaded country), which is impossible under the present political scheme. What is more, it makes it far more difficult to eject an invader who has once secured an encroachment upon territory, because those who come to the aid of the invaded country are faced with the problem of taking the offensive and taking it without the aid of surprise.

I noticed that in this morning's discussion Professor Jessup said that overwhelming force was obviously a deterrent, and that its application was immediate. It is not immediate enough for the present technical



conditions. Our Chairman, Mr. Dulles was also one of the persons whom I heard mention this fact of speed being vitally important, but I wonder if even he realised that it is a matter now not of days or weeks but of hours. Unless we perceive the bearing of this new military time-table, I feel that much of the discussion tends to be theoretical rather than practical. Quick assistance is now becoming far more important than strong assistance. The question I have to ask myself is: is it possible by any scheme one can conceive?

Mr MALCOLM W DAVIS, European Centre of the Carnegie Endowment for International Peace

Captain Liddell Hart has reminded us most usefully that technical thought has been setting a pace behind which social thinking and political thinking are sadly lagging.

Professor Ehrlich and Dr. Zimmern have emphasised the importance of means to repress threats or violations against international law and to this end it is essential to be able to form public opinion, and to form it quickly amongst the peoples. It appears impossible to do this as rapidly as armies can move, but it is nevertheless essential to do it, because without such a mobilisation of opinion there would be no adequate movement of repressive strength.

In this connection I wish to recall and to emphasise the suggestions made by Professor Jessup for some permanent system of investigation, and I submit that such a system might have an influence not only on the peaceful settlement of threatened trouble, but also on the possible treatment of belligerents by other States in the event of actual trouble.

I wish to add a suggestion which is not original with me, relating however to the working of the League Covenant and to the implementation of the Pact of Paris as well as to the Argentine Pact against Aggression and for Conciliation in Disputes, which already links most of the countries of both Americas with an increasing number of European States. The suggestion is this: in connection with such enquiries into menacing situations, States might establish the practice, and perhaps eventually the principle, of adopting towards a nation which would reject or repel the findings of an impartial judgment in a contested situation, a different attitude from that which they might take towards a nation accepting the conclusions from such findings. It might be a State pressing a claim or a State resisting a claim.

I am formulating the idea objectively as a non-partisan principle, which might open the way to identifying a trouble-maker under international law.

I believe with Mr. Reid — and that is the reason for emphasising it also — that the development of such methods is fundamental in the important problem of relationship between Continents.



Professor WEBSTER, British Co-ordinating Committee for International Studies .

This afternoon we are dealing with the problem of facts, and I would suggest that some of the questions that have been asked are already decided. It is surely idle to ask, as Mr Escott Reid asked, whether a system of sanctions has to be organized, more strictly than that in the Covenant of the League of Nations.

The whole system of the world has changed since the Covenant of the League of Nations was made. It was made in a world in which there was a disarmed Germany, a chaotic Russia, and a Japan inside the League of Nations. The present world is already organizing sanctions, and the choice before us is not whether sanctions shall be organized or not organized, but whether they shall be organized inside or outside a system of collective security. As we sit at this moment, there are men all over Europe organizing sanctions, and in the course of the last two years the whole sanctions system of the Far East has altered by unilateral methods, so that the situation of 1931 could not be repeated to-day.

Moreover I would go farther than that. Our choice is still more limited. It is, I think, idle to discuss whether sanctions shall be in one great collective system or organized in regional pacts. The sanctions system is already being organized in regional pacts. It is quite certain that regional pacts not only exist now, but will be extended in the course of the next few years. Those decisions are already made, and the only question which we can argue with any appearance of reality is whether those regional pacts shall be organized and fitted into one general system of collective security or be organized secretly and separately outside the general system.

I would submit strongly that those facts are already in existence, and that whatever beautiful, philosophical or logical plans we may make of a better system of collective security, it is idle to put them forth in the world as it to-day exists.

I would suggest also that in the Covenant itself we have one way of reconciling the collective and the regional security.

I attach very much more importance than my friend Prof Hauser to the whole question of economic sanctions. I agree with him that economic sanctions by themselves are quite insufficient to deal with the world to-day, but I think they are important as a reinforcement of regional action and as an indication of world opinion on the subject in dispute.

It is true Captain Liddell-Hart has told us the next war will be perhaps settled in a few hours. I have no authority to dispute with him on military questions, but I would say I do distrust all prophecies as to what exactly the next war may be like. It may very well happen that there will be cases, in which the attack is successful up to a certain point.



I still think economic sanctions are an essential part of the collective system and in the Covenant we have universalisation of collective sanctions and the choice of means of military sanctions

May I say one word as to how these regional pacts are to be fitted into a system of collective security. It is clearly in a sense the most important question before the world to-day. Professor Coppola, in one of those realistic statements which have so enlivened our debates and brought them back to the firm basis of present needs, gave us a very interesting illustration of how regional action could be used inside a system of collective security. He pointed out that only a short while ago it was the mobilisation of the Italian army — a force organized and ready to be directed by a strong will — which was the safeguard of the peace of Europe. I agree with him but I do not think it was solely because there was an organized army in existence. It was because that army was there to act — was it not? in a sense on behalf of a regional pact already agreed to by several States, and more than that approved by the opinion of many other States who stood outside the particular regions concerned.

How different it would have been — might we not even say how different it is — if an army is organized without such agreement before hand, without having a definite object, to which other States have agreed and which has already been approved by the great mass of public opinion. Even if the same motives of peace are behind the organization of the army it is a weapon exceedingly difficult to handle.

In some such way I believe we can direct and mobilise the regional pacts which will be the buttresses and foundations of the system of collective security. I think modern geography itself lays down that rule for us. All the modern developments I can see make it absolutely essential, and I think it is certain that that is the system which the world has now chosen.

Here is, of course, a case when we miss the presence of a large German delegation to give a German point of view on this subject. I hope I may again provoke an intervention by our German friend, because it is extraordinarily difficult to understand the exact reasons why this system of regional security is rejected by Germany. Indeed I would almost despair on that subject, did I not remember that we have had with us, taking the greatest interest in our proceedings, the Ambassador of the U S S R. I remember not very long ago that important sections in this country were constantly attacking the League of Nations as an organization of capitalists directed against the Soviet State, and indeed that the point of view was emphasised and reiterated in Moscow itself yet we know that it is now in the regime of collective security that the U S S R. herself seeks her own security.

May we not therefore hope that in the future all States will see in an organized regime of this kind not only the security of others but the security of themselves and I would add, not only States in Europe but States all over the world.



.. American security, like the security of us all, means the security of its interests all over the world, and if a war occurs in Europe, American security will be affected like the security of all others. I think that that idea is penetrating into the United States. They will not accept responsibility from one Continent to another, but one Continent will not interfere in the sanctions of the other Continents provided those sanctions are organized inside a system of collective security, and I would add also in a system of collective disarmament.

Captain LIDDELL-HART, British Co-ordinating Committee for International Studies

I should like to take this opportunity of defining a little more clearly a point that Prof Webster misunderstood.

Prof Webster thought I said that the next war would be settled in a few hours. Actually I did not say that was likely, and I do not think it is likely. But in gaining a decisive advantage in the first day or two lies the only chance — however small — of obtaining a decisive result. There is an important difference, however, between a decisive result and an initial success. If there is an initial success, which I think is much more likely, there comes the question of encroachment on a country's territory and of ejecting an invader from that encroachment.

I do not think there is likely to be a decisive victory, but I think it is very likely you may get your initial success and encroachment upon territory — and then you have to deal with the problem of ejecting the invader, and this is going to become more and more difficult with every day that passes.

Professor GIANNINO FERRARI DALLE SPADE, Centro Italiano di Alti Studi Internazionali (*translation*)

The fundamental question which arises with regard to the regional agreements is whether these agreements are not in contradiction with the spirit of the system of collective security or with the spirit of the Covenant of the League of Nations. I recall the terms of Article 20 of that Covenant.

"The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

"In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations."

On the other hand, it is obvious that it is not enough to say that a certain convention is a "regional understanding", the cases must



naturally be analysed one by one. Everyone is aware that, at the League of Nations all international conventions are registered without being analysed.

In order to ascertain whether there is a contradiction between the spirit of the regional agreements and the spirit of the Covenant, it is necessary to go right back to the principles involved and to take as a starting point the view that there are two contradictory systems for guaranteeing the security of a State on the one hand, the old system of individual defence, of national defence and, on the other hand, the system of collective security. The two are in opposition. They may be said to belong to two different logical categories, if we look at the matter from an abstract and theoretical standpoint.

Again, the word "security" is a protean term. It has, first of all, a subjective meaning. In this case, security is the certainty which a State possesses that its political independence and its territorial integrity will be respected by the other States, that none of those States will try to disturb the existing order by individual acts of violence. But the word has also an objective meaning — and it is in this sense that it is used in connection with collective security — in this case, security means the whole body of guarantees which exist in favour of a State to protect it against possible aggressions. In addition, the word collective alludes to an external guarantee, to aid coming from without, and perhaps also, in case of need to military aid.

However, when the security of a nation does not rely solely upon the forces of the State in question but also on particular alliances it must be recognised that such alliances are in contradiction with the spirit of collective security. Let us not forget, in this connection, the words of President Wilson, the father of the Covenant. Alliances, said he, on January 2, 1917 "lead only to competitions and to rivalries. Governments no longer need alliances in a concert of Powers, when all act in the same direction and under a common protection."

The natural protection which we have in the present system, instituted after the peace treaties, is the protection afforded by the Covenant of the League of Nations and the system of the Covenant rests upon a sort of triptych

- (a) means of preventing wars by a peaceful settlement of conflicts
- (b) guarantees against threats of war
- (c) disarmament.

But it must not be forgotten that the triptych, and all the articles of the Covenant, form a whole. all this is bound together. It is impossible to accept certain articles and to reject others. the Covenant was born after a difficult parturition. there is an indestructible bond between all the articles. if one of them be tampered with, the whole system of collective security falls to the ground.

The aim of collective security is to preserve peace. It is also the aim of the Covenant the aim of the League of Nations. But we know



how, after it had been signed, attempts were made to weaken the Covenant or to "contaminate" it with the idea of national security, which is contrary to the idea of collective security

The work was begun by the first Assembly of the League of Nations, which amended Article 10 of the Covenant and ruled that each Member of the League could decide when and how far it was obliged to act in order to give effect to the guarantee provided for by that article. It must be admitted that this was to warp the system.

Similarly, Article 16 was weakened when sanctions were removed from it by the action of certain States which invoked the traditional idea of national sovereignty

Again, the Covenant was poisoned by alliances. There are alliances which are called defensive. It is child's play for a jurist to give all alliances the appearance of being defensive, in any case, it is the principle of alliances itself that is contrary to the system of the Covenant, and which undermines it at the very root

I come now to the treaty of mutual assistance of 1923 and to the Geneva Protocol. There, we observe, an attempt was made to strengthen the Covenant by means of particular agreements intended to settle mutual assistance in advance and to bring it into play automatically. But this too is in contradiction with the terms of the Covenant

As Mr Reid said, it must be left to the international organisations alone to designate the aggressor, and in particular to the Council, it is dangerous to ask a given group in a certain region to designate the aggressor. Similarly, it is not natural to allow regional agreements if one State in the given region does not join in the agreement for that means that the agreement is directed against that State

It is possible that salvation may be found in the extension of treaties of guarantee of the type of the Rhine Pact, which appears to be a genuine regional understanding in the spirit of the Covenant, and in which mention is made of the "possible aggressor"

It may, then, be said that the system of the League of Nations, under which we are living to-day, has broken down. It is natural that there should be a return to the old formulas, to the old policy, to the balance of power. It is in that direction that we are tending, and this may perhaps strengthen the opinion of those of our colleagues who are hostile to the system of collective security

Professor McNAIR, British Co-ordinating Committee for International Studies

I find myself in such close accord with what Prof Webster has said on the subject of regional and non-regional commitments, that I have very little to add

As it seems to me, this question of collective security has oscillated between the two extremes of those who assert that a nation will only



act upon grounds of self interest and those who are continually urging that States should be animated by altruism as their main motive. The truth of the matter is that neither of these views is correct. No State is completely selfish or completely altruistic. Somewhere between those two extremes the truth lies, and the point at which it lies is a shifting point.

I submit that the point at which the truth now lies — I do not venture to predict about the future — but the point at which the truth now lies in terms of military sanctions may be put thus that we must abandon the idea of non-regional military commitments. I do not know what the position may be in countries governed by a dictatorship but if I may express my opinion regarding public opinion in one democratic country I do not believe that the people of that country are prepared to authorise their Government to enter into any non-regional military commitments that the country is likely to honour.

But when we return to regional military commitments, I believe that public opinion will be found to be quite different. The great merit of those regional military commitments is this — a regional pact is much more likely to coincide with national defensive interests, and on that account much more likely to be respected, much more likely not to involve armaments in excess of what are required for national defensive interests.

One of the grave dangers, as it seems to me, of non-regional military commitments is that they are constantly being used as an argument against any diminution of armaments. That is an argument that is much less likely to be deduced from the existence of regional military commitments, for the reason that those regional commitments are so closely identified with obligations of national defence.

One further remark upon the merits of regional pacts. I do not think that it is fully realised at present in regard to regional pacts, that they not only impose obligations upon the guarantors, but confer upon the guarantors a certain degree of control over the parties who are guaranteed. It is the greatest mistake in the world to think that when State A has given a guarantee to State B then State B thereupon has *carte blanche* in its foreign policy. The fact that one State has guaranteed another puts that guaranteeing State in a position to give advice of a very authoritarian character and this places it in a position to prevent the State which it is guaranteeing from entering into alliances and other commitments which may enhance the obligations that have been undertaken by the guarantor.

That is one reason, I submit, why these regional pacts are likely to work in favour of peace, because the guarantors are implicated in the conduct of the State whom they are guaranteeing and are therefore likely to exercise a beneficent control upon the activities and conduct of that State.

If I may leave the military guarantees I should like to say one or two



words upon non-military sanctions. I think that the presence in the Covenant of the League of Nations of this rather vague statement in favour of non-regional military sanctions has tended to bring about a neglect of the non-military sanctions envisaged by Article XVI of the Covenant, and I do not think they have received sufficient study. I do not think that their importance and their capacity for applying pressure are sufficiently realised.

It would be completely out of my place to attempt to analyse economic and financial sanctions, because those are highly technical matters that must be left to experts in those subjects. But there is one general reflection regarding them that I would venture to make, and that is this. We are little inclined to assume that when a State is called upon to apply economic financial sanctions against a wrongdoer, that State should have no hesitation in doing so, regardless of the consequences which may react upon itself.

Now I incline to think that before one can expect anything like a ready response to a call for the application of these non-military sanctions, the States who are asked to apply those sanctions are entitled to expect some kind of protection against the possibility, indeed probability, of attack by the Power against whom those sanctions were being applied. In other words, I hardly think that it is reasonable to expect much application of economic and financial sanctions unless the States prepared to co-operate in that direction enter into some kind of mutual guarantee to help one another in the event of the Power against whom those sanctions are being applied "turning nasty" and retaliating upon the States applying those economic sanctions.

Dr. BERBER, Berlin

It is only with hesitation that I am accepting the very strong invitation of Professor Webster to answer a very definite question. It is with hesitation, and I am afraid that the main content of what I have to say will naturally be a declaration why I cannot answer, in full, his question.

But first I should like to touch on one point quite shortly. You say it is a pity that there is not a large German delegation here. I should like to correct that statement by saying that there is no German delegation at all, because I am here only as a guest and not as a German delegate.

No German has been a member of this Conference since October 1933, which date perhaps gives enough explanations for that.

Just as I am here only as a private person, I am hesitating to go into the material question itself. I should like to say quite shortly this. If you ask why does Germany not join the regional pacts, I would say first that the first regional pact, and the one regional pact in which apparently the whole world has confidence, has been created to a great extent by the initiative of Germany. It is namely Locarno. And I should like



to add that this regional pact of Locarno is a pact to which we cling even now and very strongly

The second thing I wish to say is that there has been a very thorough explanation of our position in a speech of two and a half hours duration, given about a week ago by Adolf Hitler himself. I venture to say that if the thirteen points of this speech were examined thoroughly and accepted in the same spirit in which they were uttered, we should be very soon in a much greater state of security in Europe than we will be after some years of the regional pacts, if a sort of regional pacts would become the fashion in Europe.

I might even say that the comments of *The Times* at the beginning of this year have shown a very great understanding why we are out of some regional pacts and it might be that there is a delegation in this room which might answer your question as well, because that country too has refused until now to join that concrete regional pact. It is Poland, and the Polish delegation have reasons very similar to our reasons not to join.

I do not want to go very far into the details of why we cannot join that regional pact, because that would mean that I would have to explain at length many things which apparently are not understood or are misunderstood. I personally think that as long as Germany is *terra incognita* and so long as it is possible for English people to speak about Germany as a Fascist State — which my Italian friends will agree with me it certainly is not — or as a totalitarian State — which it is not intending to be — or as a dictatorship — which it certainly is not — as long as that sort of misunderstanding subsists, it is terribly difficult to say in a few words the reasons for our staying away which are deeply rooted in our own conception of life and politics.

I can give them in three short words. First, our foreign policy wants to be concrete: our foreign policy wants to be realistic and our foreign policy wants to be political. That means that we do not believe that words change a situation, and if you give the name of Sanctions to a thing which until now has been called war we do not agree that anything material has been changed.

As far as the concrete and realistic situation is concerned, I might even almost verbally quote the words of Sir Austen Chamberlain, when he explained the British point of view as to why they did not want to join the Geneva Protocol in 1924. That is just sufficient to show what I mean.

The second point is this. It is not quite clear what is meant by "regional". If we in Germany should join in any regional pact, we would want to define ourselves what the geographical boundaries and limits of that region are. It seems to us utterly inconceivable that the region of Eastern Europe should include France as it does in this international scheme of the Eastern Pact.

In any case, as Hitler has very clearly said, we do not want to come



to any conferences or to take part in any agreements, in the drafting of which we have not been collaborating from the very beginning. That is one side of it.

As for the three subjects concrete, realistic and political, I would think that this might be the content of a whole international Studies Conference. A few minutes ago I had a talk with Professor Toynbee, to the end that a concrete situation to study would be much more important than to be in the clouds of abstract and general terms.

That brings me to a second point of the regional pacts themselves. We cannot conceive that the national political interests are changed simply by the fact that you construe an agreement in words which express themselves in general terms. It still remains, Russia does not love us, and we do not love Russia. That is a simple fact which is not changed at all by the creation of regional pacts, by which Russia would promise to assist us — an assistance which we do not believe would be given and a help and assistance which we would not want to be given to Nazi Germany for reasons very obvious, and in which we have much in common with Poland.

All I want to say is just to show the direction, and I would state very strongly that I am not going at all into the material side of why we cannot join certain regional pacts, but, of course, I have pointed to the fact of the Locarno Pact, and therefore your question from the beginning meant something, said something which certainly does not happen.

I should like to conclude with this. The expression "collective security" certainly points to an ideology, but like each ideology is the expression of a very definite position. Now the situation is this. If you have on the one side a conference of bankers, of industrialists, and on the other side you have an unemployed man, the main interest of the bankers will be the upkeep of prices or currency and matters connected with security, whilst your British unemployed man here is not so much interested in economic security. He seeks a change in his position whereas they are interested in economic change.

It seems to me, from this point of view, the term "collective security" shows a programme which is only a detailed part of the big problem itself. What we would have to find out first is in what we all agree, — you, and the Italian delegation and myself, because those are three different attitudes in my eyes. There is the attitude of collective security, there is a denial of the truth of collective security, and there is a misty and cloudy position, as it appears to you. I think what we have in common is that we want peace, and the question is by what means. Collective security is a very definite means. Perhaps it is not the best means, or the only means, and by beginning with collective security we are somehow overshadowing the problem itself, because sometimes we think of preserving the peace, and at the same time mix that up with the problem of a very definite means.

From that side, my statement about the man who is unemployed and



the man who wants security for his points, shows that we should have to go still deeper in order to understand one another really. Therefore I refuse to move on the basis of the problem of collective security when you ask me for an explanation of the German position at present.

Dr CHARLES BERTONI, Central Committee of Polish Institutions of Political Science (*translation*)

I observe that all the measures which are being discussed here are of essential importance and it is worth noting that most of them are provided for directly or indirectly in the Covenant of the League of Nations. In my opinion, our duty as members of an International Study Conference, and the duty of jurists as well, should be to stress the fundamental importance of the Covenant, to develop and to complete its provisions on every occasion, whenever legal science is called upon to aid the politicians, the diplomats, and the negotiators in their work.

And the arrangements which should above all fill in the outlines of the Covenant are exactly the bilateral agreements to be concluded between neighbour States, and, arising out of situations which are in some cases quite delicate, the treaties which set up new international collaborations. There is no doubt that these treaties are very useful, and I believe I speak for the great majority when I say that they render excellent service to the cause of peace and of security.

If voices are nevertheless raised in criticism of these treaties, alleging that they are not in harmony with the multilateral treaties, that they are open to false interpretations and that they weaken the tendencies toward general pacification. If some critics express doubts as to the possibility of harmonising them with the treaties previously concluded and hold that they make the interpretation of those treaties difficult, I reply that these criticisms arise out of a misunderstanding. It is unquestionable that bilateral or regional treaties, by completing the pacts and agreements of broader scope, serve the same sublime goal — the cause of peace.

Moreover in these agreements is almost always to be found the clause of "concordance" — they must not be in contradiction with treaties previously concluded.

A further advantage of regional agreements, and especially of treaties of non-aggression, is their strictly negative attitude toward war — all war whether legal or illegal from the viewpoint of the Covenant, is excluded.

This leads to an important principle — the repression of the war of aggression is found in the treaties of non-aggression. I shall cite, by way of example, the treaty concluded by Poland with the U S S R. and the treaty concluded with Germany in 1934. These regional agreements are the more important for the general stabilisation of peace in that they provide a peaceful procedure for the elimination of



political tensions. I must, however, point out in this connection that there may be regional agreements which do not fit into the organisation of peace as it is provided by the Covenant of the League of Nations, either because of their effects or because of their form. As for the political aspect of certain regional agreements which failed of acceptance by one or another of the parties involved, I do not think that this point falls within the scope of our discussion.

From what I have just said, it appears that regional agreements contribute to the rational evolution of the provisions of the Covenant. This fact is important and deserves to be stressed.

Speaking of the relation between regional pacts and the problem of collective security and of the legal organisation of peace taken as a whole, I wish to call attention to certain principles brought out in the memorandum of Professor Deryng, which may be useful to the preservation of peace. These fundamental principles for the elaboration of regional agreements may be summed up as follows.

(1) The first of these principles is the universality of the interest of the States in the preservation of peace. This principle carries with it the elimination, from the legal standpoint, of the distinction between Powers having worldwide interests and Powers having limited interests, — a distinction which might be harmful to the organisation of peace, for any violation of peace may bring about a general war, embracing the whole international community.

(2) The second principle is that of the respect of the "personal" immunity of the States, including three elements: Government, territory, population. This principle *sine qua non* of all treaties is formulated in Article 15 of the Covenant, in the restrictions made relative to self-defence in the Kellogg-Briand Pact, and in Section 5 of the German-Polish Treaty of non-aggression. Similarly, in the pact relative to the determination of the aggressor (Annex), it is expressly stated that no act of aggression can be justified by the internal condition of a State, by its political, economic or social structure, by defects of administration, nor by disturbances due to strikes, revolutions or civil war.

(3) The third principle is that of making undertakings concrete. Regional agreements have the great advantage of being close to real life, while general pacts create an atmosphere favourable to these regional agreements.

(4) The fourth principle is the exclusion of the negative precedent, that is to say, of the breach of a pact. In this connection, I wish to remark that multilateral treaties run a greater risk of not being observed, and that this may weaken their authority. The risk is less for regional pacts.

(5) The fifth principle is that of the unity of the rule of law. This rule of law loses its effectiveness when it is too often repeated or modified under a different form. Once the obligation is declared and accep-



ted, it ought to remain without needing to be strengthened by the same declaration being made in different words

(6) Finally — last but not least — a last principle must be added, the well-known principle of good faith, which Professor Ehrlich expressly underlines in his remarkable memorandum on the Development of International Law and which should underly all agreements.

I wish to say in conclusion that it is desirable to complete and strengthen the construction of legal peace by regional agreements which themselves complete the Covenant of the League of Nations

Professor GEY VAN PITTIUS, South African Institutions

After Professor Webster has laid down the law to Mr Escott Reid about regional agreements, I am rather diffident to raise this question again. But it seems to me that there is not so much difference between the regional agreements which Professor Webster says have become accomplished facts, and the sort of regional agreements which Mr Escott Reid envisaged. It seems to me the difference is one rather of degree than of kind.

There are other countries which are similarly situated to Canada the United States, South America and so on. I am thinking for example, of the whole Continent of Africa, of the Far East, and of Australasia. There it is similarly a fact that it is difficult to arouse sufficient interest in a dispute somewhere in Europe among the people to come to the aid of some such State, especially to give to it aid by means of force.

Therefore my mind harks back on an idea of having regional agreements more or less in certain parts of the world. We have had the Monroe Doctrine operating in North and South America for a very long time. I will not say anything about the way it has operated, — but at any rate it has, — and with this post war type of mind, it seems to me we might have similar agreements, or rather similar arrangements, in other parts of the world

Personally I think that regional agreements may become dangerous if they are only between a few States. They may become of such a nature that it will be difficult to define the difference between a regional agreement and an alliance of the old type. Therefore, even as far as Europe is concerned, I think all danger would disappear if the regional agreement could be made effective for the whole of Europe. Similarly for the whole of America, North and South, or North separately and South separately

I realise that there are very many difficulties in the way. Take Africa, where you have European States which have colonised the greater part of Africa, and it is very difficult to define what their position is going to be.

Also I realise there is the other difficulty that one regional group or one Continental group may come to a stand against another



But these difficulties could be, I think, eliminated to a very large extent by placing it all under one project of collective security, in the sense that you have a League to stand over them all. A South African statesman, Dr. Malan, once said that he thought the League of Nations should be the alliance of all alliances. It should be the top, the apex, of all the various alliances.

This to my mind would at any rate ensure immediate attention. It would ensure interest. It would ensure immediate action among the various constituent parts wherever a dispute of a serious nature may arise. It seems to me even the question of neutrality is bound up with this.

Therefore I would like to have some opinions on this question of regional agreements not being limited merely by personal interest or by a few countries, but stretching them over much larger areas where there are similar interests, and where generally speaking public opinion could be roused.

If we think of the Canadian reaction on the Locarno treaties, in South Africa we have had reactions on some of those things too, there is also the Australian reaction on the Protocol of Geneva and so on. It seems to me that the only solution is to have those regional agreements drawn on much larger geographical lines.

Mr CAPPER-JOHNSON, New Commonwealth Institute

I am very grateful for what Dr. van Pittius has said in the last speech. I feel that there is not a great deal that I should add, but there are just one or two points that I want to raise, more in the way of questions than anything else.

I find myself, for example, asking just exactly what we mean by a regional pact. There seem to be different things that are mentioned from time to time as regional pacts, and I take it that we are to judge them primarily by that regional pact which was signed at Locarno.

Dr. van Pittius suggested that the League was over all and should be over all, and Lord Lytton earlier on stated, I think, if I understood him aright, that a regional pact was no substitute for the Covenant.

Now the question occurs to me, can you have regional pacts actually and maintain the universality of the Covenant, for a regional pact by its very nature is serving notice that you will only use your sanctions within that particular region and not in other regions.

I am wondering, first of all, therefore, whether we are not talking of two different things when we speak of regional pacts and when we speak of the universality of the Covenant.

Another question which comes to my mind is this. Are not the areas within which you can have regional pacts very limited? Actually we are prone to look at Locarno. Locarno has taken place in a very peculiar region, in the one region in the world in which some four



great Powers are, if not contiguous almost contiguous. The other areas of the world in which you have, if not a number of great Powers together like that, at least a number of States of equal strength together, are comparatively limited.

It seems to me therefore that for us to conceive of regional pacts as if it were a new way in which we can build up a world system will have certain objections that may lead it to fail.

Moreover is it not true that we have to consider regional pacts in a different light according as to whether a country has not simply as it were, one frontier about which it is concerned, but has two or more frontiers? Let us suppose that you have, shall we say three or four regional pacts in Europe. Certain States doubtless will be members, signatories of more than one of those regional pacts. If an aggression is committed under shall we say pact A, do we expect those States to use all of their forces, or to reserve part of their forces for another aggression that may be simultaneously committed under pact B?

It seems to me that you raise there the whole difficulty of linking together different regional pacts that may include the same States. Yet if they do not, I think we are obviously not talking in terms of political realities.

I would lastly come if I may to this question. It has been suggested that the reason why regional pacts are sound is because they are based upon self interest. Now is self interest really such a certain factor that you can base sanctions upon it? Even look at the type of regional pact which we are considering, this Treaty of Locarno. Sir John Simon has said, as British Foreign Secretary that in the last resort, Great Britain — and therefore presumably the other signatories also who are members of the Council of the League and involved in the decision as to whether or not they are bound by the terms of the Locarno Treaty — in the event of a war between Russia and Germany and France then coming to the assistance of Russia should not in those circumstances — in spite of the fact that France would be going to war with Germany — be bound by the Locarno Treaty.

If that is the case, I suggest that we are up against another point, which is equally important in sanctions. It is perfectly true that in order for sanctions to operate properly you must have an overwhelming force but it is surely equally true that that overwhelming force must be certain. You cannot be doubtful as to whether or not the overwhelming force is going to operate.

It appears to me to be fairly certain that you can never be sure as to whether your force is going to operate so long as that force consists of contingents of armed forces that are controlled by national Governments, because those national Governments inevitably will consider whether or not their interests are bound up in that particular occasion. If they are not, then they will find some perfectly good legal loophole



or reason why they should not use their armed forces in that particular case

Some, as a result of that, have advocated, of course, that we should have some form of international police. I do not want to discuss that particular project here, except to mention one objection to it which does seem to me to have been over-emphasised. It has been stated that the objection to an international police force is that it can never be overwhelming, or at least that it is almost impossible to make it overwhelming vis-à-vis the present armaments. I would agree with that entirely, but I do think we omit the fact that, so far as I can see in at any rate most of the reasonable proposals that have been made, it has never been proposed that there should be an international police force to cope with the present armaments. If I may be permitted to say so, I do think we must recognise that that measure of disarmament is in itself an essential part of the problem of security which we are facing.

I suppose I shall be told that I am young and an idealist. I am glad I am young, and I hope I am an idealist. But I would like to say this. That it does seem to me that political scientists, like, shall we say, economists, are not simply just politicians who have to make a proposal that may meet the political circumstances of the moment. They have surely first of all to examine the world realistically and then to prescribe, in so far as they can, to indicate, the lines upon which they feel that the world ought and can soundly develop towards its ideal, towards what it wants.

It may be that under the political circumstances of a given moment that cannot immediately be fulfilled it does not seem to me that it is therefore for the political scientists to say it is unsound. The degree of fulfilment may depend entirely on momentary political circumstances.

It does seem to me that we should be extremely unwise if we immediately said that it is along lines of regional pacts that we would build up an international system.



## § 3 — NEUTRALITY

### THE NOTION OF NEUTRALITY IN A SYSTEM PROVIDING FOR THE REPRESSION OF RECOURSE TO WAR

#### A. — MEMORANDA

##### DENMARK

(Institute of History and Economics)

#### THE SYSTEM OF SANCTIONS OF ARTICLE 16 OF THE COVENANT AND THE FUTURE RÔLE OF NEUTRALITY

by GEORG COHN (*translation*)

The right of neutrality must necessarily continue in the future to play an important part, outside of as well as within the system of sanctions of the League of Nations. It involves, naturally a weakening of that system, and it is therefore natural to ask what remedy can be found for this state of affairs, so that the system of sanctions may become more and more effective and universal. The answer is contained in the foregoing remarks. The system must be modified in such a way that the conditions necessary to its application shall be made clearer, and, in particular that they be made independent of questions of responsibility which are both subjective and hard to prove. The system of sanctions should be directed against war as such, as a fact, without regard to its psychological basis. From this point of view defensive war must be included as well as offensive war so that the States not involved in the conflict may not be obliged to make a choice which would at the same time necessitate the moral condemnation of one of the Powers, but may simply be confronted with the state of war as a fact which must be prevented and combated, in the common interest of all the nations. It is of little importance to determine who from a purely formal standpoint, is playing the part of the aggressor. War is forbidden in all cases and for all parties, and it cannot provide any kind of advantage, whether economic, political or legal. Hence the rights accorded to belligerents by the Hague Conventions of 1907 and the Declaration of London of 1909 should likewise disappear and be replaced by a system of legal measures taken to the detriment and prejudice of the belligerents. The right of seizure of ships carrying contraband of war etc., should be granted to the non belligerent States and in particular to those taking part in sanctions.

At the same time, the juridical situation of the Powers not involved in the conflict should be facilitated and improved. It should be estab-



lished clearly and definitely that participation in sanctions in no case involves for them an obligation to go to war, and their duties in regard to sanctions should be strictly limited so as not to involve the necessity, in fact or in law, of a state of war, — a result which can be obtained without diminishing the effectiveness of the system. In addition, the system of sanctions should be entirely concentrated in the hands of the Council, so that the various members of the League of Nations would have neither the right nor the duty of applying by themselves individual sanctions. The Council should decide when sanctions are to be applied and when they are to cease, so that the different Powers may not have on this point any individual responsibility, and so that it may thus be quite clear that they are not seeking an individual advantage and are not letting themselves be guided by selfish sympathies, but are acting solely in the general interest of the League of Nations as a whole. The decision of the Council should be binding on all, and should be reached by a modified majority — of three-fourths, for example — and under such conditions that the representatives on the Council of the belligerent States (both the aggressor and the State which has been attacked) would not have the right to vote. All dispositions, whether economic, political or military, should proceed from the League of Nations as such, and not from its individual members. In this connection, the creation of an international military force should be studied in detail. This military force should be so organised that the citizens of the belligerent countries would not be able to take part in it nor play any rôle in its management, but would be removed from it in each particular case and replaced by citizens of other States. In addition, the measures taken by the League of Nations should not, in any case, include a state of war properly so called. All sanctions, including the employment of international military forces, have as their only object to prevent, by constantly increasing pressure, the outbreak of war, or to seek, by the same means, to put a stop to a war which has begun.

If these principles are applied, the right of neutrality will have no function in the future, simply because the system of sanctions will no longer involve any necessity for the Powers not engaged in the conflict to abandon their state of peace, since the system of sanctions will be applied by the League of Nations and not by the States individually, and since war in general will no longer be recognised as a juridical state of affairs carrying with it rights and duties for the different countries. The thing to be prevented and combated will be the state of war itself, in other words, the massacre of the young men of the various countries, no matter what its goal, no matter under what name that massacre may be designated. Only a system of sanctions with this orientation and this organisation can provide an effective international security not only to the State attacked but also to the members of the League of Nations, which, while not engaged in the conflict, may be called upon to participate in sanctions.



## FRANCE

(Commission française de Coordination  
des Hautes Etudes Internationales)

## THE EVOLUTION OF NEUTRALITY

by PAUL DE LA PRADELLE (*translation*)

Those who maintain that a neutral attitude will be impossible in a future war in spite of the bilateral treaties and the domestic documents — texts or declarations of a constitutional nature — which expressly stipulate the maintenance of a policy of neutrality base their opinion on the texts of the two great international pacts which, in different measure, have outlawed war — the Covenant of the League of Nations and the Kellogg Briand Pact. But an examination of these texts in the light of official interpretation proves on the contrary that voluntary neutrality remains legally possible, and that the announcement of its death has been premature.

But the examination of these same texts, and especially of the political commentaries of which, since their ratification, they have constantly been the object, also proves that the classical conception of neutrality codified in the Hague Conventions of 1907 has undergone profound modifications. In theory as in practice, neutrality is at present an idea in active evolution.

*The Status of Neutrality according to the Covenant  
of the League of Nations*

The system of The Hague was perfectly consistent with the conception of war which was at the time embodied in the accepted doctrines of international relations. War was a recognised method of settling international differences a veritable institution of international law. It was, moreover a simple relation between States. Was this situation to remain unchanged when, on the morrow of a grievous experience, the creation of a League of Nations was envisaged, — the coming that is to say of an institutional organisation of international relations, founded on the concepts of interdependence and of collective security? Would not a new conception of war arise and prevail, whose consequences must necessarily modify the classic conception of neutrality?

.. The Preamble of the Covenant, more prudently than logically limits itself to formulating certain obligations not to resort to war " but it is evident that in the mind of its founders it condemns recourse



to armed force,<sup>1</sup> and consequently excludes, in case of war, the hypothesis of neutrality

On April 2, 1917, addressing Congress, President Wilson said "Neutrality is no longer possible or desirable when the peace of the world and the liberty of the peoples is at stake "

Such was certainly the opinion manifested in 1921 by the Council of the League of Nations, when it presented the maintenance of the neutrality of Switzerland, in spite of its admission as a member, as an exception confirming the rule

Nevertheless, from that year on, the political doctrine and argumentation of the former neutrals was to point out, in the Covenant, a certain number of provisions of such a nature as to ensure, at least in some cases, the maintenance of the classic conception of voluntary neutrality This argumentation found support in the fact, implied indeed in the Preamble, that the Covenant does not in all cases forbid recourse to war The whole system of the Covenant rests upon a discrimination among wars, some of them being illicit and others tolerated Since the possibility of a just war is admitted by Article 15, paragraphs 7 and 8 of the Covenant, free and impartial neutrality of the old type must still be admitted, at least in this case

In the course of the following years, this tendency, far from diminishing, was to become more marked It was to influence the former Allies and to exert an action on the very articles of the Covenant which seemed to postulate necessarily the breakdown of neutrality Articles 10 and 16 became the object, through interpretations and amendments, of a series of limitations, of " nibblings " which, in the long run, denatured their meaning and their scope

The system of The Hague, in the first of its fundamental elements, was to be readapted to that very hypothesis of illicit war which in principle excluded it This is one of the most contestable consequences, from the standpoint of logic, if not one of the most politically regrettable consequences of the incomplete character of the Covenant. The free determination of the attitude of neutrality reappears, thanks to the inadequacy of a hastily voted text

It is to be noted that Article 10 leaves it to the States to decide when the *casus garantiae* exists, and that, at the most, it is the task of the Council, charged with recommending the measures to be taken for its application, to call attention to the existence of the *casus garantiae*, and that there is no special rule providing for an exception in this case to the rule of unanimity set forth in Article 5

A similar reasoning, applied to Article 16, reaches the same result . it is the rôle of the State which is required to carry out the duty of

<sup>1</sup> See the Preamble of the draft adopted by the Commission of the Peace Conference charged with the drawing up of the Covenant, known as the Commission of the Hotel Crillon, in its session of February 4, 1919, in the collection of *Documentation internationale*, Paix de Versailles, t II, p 139



applying a sanction to decide that the facts exist which should set the machinery in motion. This constitutes in reality a genuine freedom of decision.

By virtue of this twofold fissure, voluntary neutrality is maintained, in the very place where it ought logically to have given way before the obligation of guaranty and of sanctions.

Does this mean that, in terms of this destructive interpretation, the regime of The Hague has been purely and simply restored? Not at all. If neutrality remains, in the last analysis, voluntary it is at least proper to recognise that the exercise of this voluntary action is limited by elements of legal and moral judgment. In the traditional positive law it was unlimited, and rested solely on elements of political judgment. The present system of the Covenant, compared with the system of The Hague, may on the contrary be characterised by the following formula: for the signatories of the 1907 Conventions, neutrality was a question of interest for the members of the League of Nations, it is a question of conscience.

In the traditional system of The Hague, neutrality both condition and act, determined the application of a regime of positive law whose essential characteristic was impartiality between the belligerents, both in act and in abstention from action. But it may be stated that, in the framework of the League of Nations this regime no longer exists.

Here again, progress has been achieved little by little, by a process of "nibbling" away the Covenant. The work of dissociation of the articles of the Covenant relative to sanctions, if it has led to the destruction of an ideal and logical repressive system has at least made possible the construction of a neutrality regime which is entirely new as compared with the system of The Hague, if not unprecedented in doctrine and in diplomatic practice. This is the great innovation of the Covenant. The letter of the sanctions system has been transformed into a custom regarding neutrality which the founders of the Geneva system certainly did not foresee.

This constitutes an evolution whose point of departure may be discerned in the preparatory studies of the Hotel Crillon. Two opposing theses were represented in the drafts submitted to the Commission charged with the working out of the Covenant.

In the majority of the texts presented, the mechanism of sanctions was to include a complete set of economic, military and naval forces put in motion by the members of the League against the guilty State, with which they were considered *ipso facto in a state of war*.<sup>1</sup>

Certain drafts distinguish between economic sanctions and military sanctions only the former being obligatory and immediately executory

<sup>1</sup> See in *Documentation Internationale* Phillimore Draft, Art. 2, p. 52. Grey Draft, p. 56. Robert Cecil Draft, II § 3 p. 76. British Draft, Art. 12, p. 93; French Draft, IV § p. 121. Italian Draft, Art. 29 p. 134.



while the latter remain optional or are to be applied only by decision of the Council. In the majority of these texts, moreover, the *state* of war is no longer mentioned. It is replaced by the term *act* of war, considered as committed by the guilty State against all the signatories.<sup>1</sup>

The preference of President Wilson, long hesitant, inclined finally toward this second solution.<sup>2</sup> The draft finally adopted for submission to the Commission for discussion differed from the earlier ones in that it included only one article on sanctions, Article 14, and the meaning of this article was still obscure.<sup>3</sup> On first reading,<sup>4</sup> the article, after a brief discussion, was adopted without any apparently important change.<sup>5</sup> However, as reading followed reading, the scope of the article was gradually narrowed. The text presented for first reading spoke of "specification" by the Council of armed contingents which the members of the League would be *obliged* to furnish. On second reading, this was changed to "indication." Finally, on third reading, in the text adopted for submission to the plenary Conference, the article speaks only of a "recommendation" by the Council regarding the military or naval effectives which the members of the League "shall contribute" — not, as before, must contribute — to the armed forces to be used to protect the covenants of the League.<sup>6</sup>

Thus, even during the elaboration of the Covenant of 1919, the system of sanctions in the League of Nations was progressively weakened. But at the very moment when the dissociation of the economic and military sanctions had just regrettably weakened the principle of collective security implied in the new regime of solidarity embodied in the Covenant, that dissociation was to make possible the founding of a new conception of neutrality, which was far from negligible for the future of security.

In the light of Article 16, the neutrals of the last war realised that it was necessary to break with the traditional regime of neutrality, incompatible henceforth with the new conception of international order. This was an important change in the policy of the neutrals, a change which is at present growing steadily more marked.

On March 21, 1919, the representatives of the "neutral Powers" were given a hearing before the representatives of the Commission on the Covenant.

<sup>1</sup> House Draft, Art. 18, p. 61, Smuts Draft, Art. 19, p. 69, Hurst-Miller Draft, Art. 14, pp. 107-108.

<sup>2</sup> See the different Drafts of the President, *Documentation internationale*, *ibid*. First Draft, Art. 6, 7 and 10, pp. 64, 65, Second Draft, Art. 6, 7 and 10, pp. 80, 81, Third Draft, Art. 6, 7 and 10, pp. 100, 101.

<sup>3</sup> See text, *ibid*, p. 118.

<sup>4</sup> *Ibid*, p. 149.

<sup>5</sup> *Ibid*, pp. 187, 188. The article, on second reading, became Article 16 of the Covenant.

<sup>6</sup> *Ibid*, p. 385.



This briefly reported discussion brings out the fact that, while the neutrals resolutely opposed military sanctions, they were ready to accept economic, commercial and financial sanctions which they considered as compatible with neutrality. In reality we must not be deceived on this point. The traditional regime of neutrality excludes all categories of sanctions, for it is the idea of the sanction in itself which is at the source of their incompatibility. But it is an unquestionable fact that the former neutrals, those for whom neutrality wears the aspect of a constitutional dogma, realised the necessity of bringing their traditional policy into harmony with the duty of sanctions.

But was not this profession of faith of the neutrals a manifestation purely episodic in character? This does not appear to be the case. The official discussions which have since taken place, in the countries which might be called professional neutrals are significant on this point.

A new institution has been born: a relative, benevolent, attenuated, differential or partial neutrality tending toward the setting up of an ideal system of sanctions, which would be characterised by the disappearance of neutrality and which already has gone considerably beyond the traditional regime formulated in 1907. If this evolution is in contradiction with the positive law of The Hague, it finds, however support and important and solid precedents in the theoretical and practical history of neutrality.

Many authors, since the masterly study of the regretted Professor von Vollenhoven, have pointed out, in this connection, the renaissance in international relations of the theory of the canonists and especially of Grotius, regarding the duties of the voluntarily neutral State.<sup>1</sup>

It suffices, moreover to glance through the collection of declarations of neutrality which have been made in modern and contemporary history<sup>2</sup> to perceive that impartiality is not a necessary element in the traditional customary conception of neutrality.<sup>3</sup> The protests addressed to neutrals during the last war prove, moreover that strict impartiality is practically impossible.<sup>4</sup>

The Covenant of the League of Nations, in the last analysis merely made it possible to give statutory form to a conception already indicated

<sup>1</sup> See notably the studies of Professor Le Fur: *La théorie du Droit naturel depuis le 17<sup>e</sup> siècle et la doctrine moderne*. Recueil des Cours de l'Académie de La Haye 1927 III pp 313 ff., and of Professor Bourquin, *Grotius et les tendances actuelles du droit international* in the *Revue de droit international et de législation comparée* No. 1 1926.

<sup>2</sup> See the numerous texts reproduced in the collection of the *Naval War College* and particularly the references in the index published in 1932 under the headings: Qualified neutrality. Benevolent neutrality. Friendly neutrality. Partiality.

<sup>3</sup> See Jessup *American Journal of International Law* p 790.  
In *Foreign Affairs* April, 1934 Mr Charles Warren, former Assistant Attorney-General of the United States from 1914 to 1918 emphasises "The drawbacks of neutrality" and the impossibility of a strictly impartial attitude on the part of the neutral State.



by a steadily growing doctrinal tendency and by the occasional practice of the States

To sum up, the contribution made by the Geneva Covenant to the evolution of the system of voluntary neutrality may be synthesised in the following propositions

In case of tolerated war, maintenance of the classical status of neutrality

In case of forbidden war, option of neutrality, with application of a new regime of benevolence and of partiality

. The Pact of Paris, which should logically have condemned neutrality at the same time as war, is considered to-day as having authorised neutrality. But does this mean that the Pact of Paris has not been able to render possible an advance in the evolution of the traditional concept of neutrality?

Even before the Pact of Paris was signed, a tendency had appeared in the United States, in Congressional circles, favourable to the orientation of American policy toward an attitude of qualified or benevolent neutrality, similar to that which appeared in the course of the interpretation of the Covenant of the League of Nations. Supported by a large part of public opinion, encouraged by an influential doctrine, favourably received by the present administration, the movement in favour of "strengthening the Kellogg Pact" seemed, at the beginning of 1934, destined to score an opening victory in Congress. It was obliged to content itself with a resolution which, while it represents a slight advance beyond the traditional regime of neutrality, falls far short, nevertheless, of the status accepted by the neutrals, traditional or eventual, within the framework of the Covenant of the League of Nations. However, the signature by the United States of a recent Pact, and of one which commanded a good deal of attention, justifies the belief that the progress, though barely perceptible thus far, cannot fail to become more marked in the future

It was in connection with the problem of the embargo on the exportation of arms that the so-called movement for the strengthening of the Kellogg Pact took shape in Congress. In 1927, during the preliminary negotiations for the Pact, Congressman Burton, on December 5, introduced in the House a resolution according to which the policy of the United States would be "to prohibit the export of arms, munitions and war material to any country engaged in a war of aggression against another, in violation of a treaty, convention or any other arrangement providing for recourse to peaceful means for the settlement of international differences"

But at the beginning of 1928, while the negotiations relative to the Briand-Kellogg Pact were going on, Congressman Burton, after having once more introduced his original resolution, suddenly withdrew it and



introduced a different text, whose modified terms show a fundamental change of principle.

The new Burton resolution, that of January 25 1928 is worded as follows: "The policy of the United States shall consist in forbidding the export of arms, munitions or war material to *any* nation engaged in war with another nation."<sup>1</sup>

Far from abandoning the traditional conception of impartial neutrality does not this resolution seem by its terms, to strengthen that conception?

We have seen that the law of The Hague contained a large fissure consisting in the distinction made between the furnishing of war material to the belligerents by States and by individuals the former alone being forbidden, while the latter could be forbidden at the discretion of the neutral State alone, on condition that a strict impartiality between the belligerents was observed in the application of this prohibition.<sup>2</sup>

But, under the terms of the second Burton Resolution, the neutral State would undertake in advance to prohibit private commerce in arms and munitions, in case of war. This is a proposal which, if it is not contrary to Article 7 of Conventions V and XIII of 1907 is in contradiction with the custom established by the declarations of neutrality based on this article, and in particular with American practice. It is well known that, far from forbidding the export of arms, as the Hague Convention authorised them to do the neutral States, in the course of the last war secretly encouraged it, merely reminding their citizens, on occasion, of the risk of capture that they ran. As to the United States before it entered the struggle on the side of the Allies, it had absolutely refused to establish impartially the embargo on arms which Germany and Austria had urged upon it.<sup>3</sup>

It is in the light of these precedents that the second Burton resolution should be examined. By strengthening the imperfect international obligation regarding contraband of war, through the promulgation of a domestic rule, sanctioned by a penalty imposed by the courts, it certainly constitutes an advance beyond the traditional regime of The Hague. The risk involved in contraband has become a penal offence. The status of individuals and that of the State in maritime war have been brought closer together.

It is none the less true that the two resolutions successively introduced carry with them, in relation to the traditional regime of The Hague, transformations and improvements of unequal importance. Which is to prevail in the future, the tendency toward partiality or that which looks to a strengthening of impartiality?

<sup>1</sup> See the complete text, in four articles, in *Wright* p. 359.

<sup>2</sup> See in particular Articles 6 and 7 of Convention XIII of The Hague, 1907.

<sup>3</sup> See *International Conciliation* 1929, p. 269.



Thus, as matters stand at present, it is the doctrine of impartial neutrality linked with abstention which has received the official endorsement of Congress. While the United States, independently interpreting the Kellogg Pact, has felt the need of modifying the traditional system of neutrality, as codified in 1907, it has not been willing to adopt the doctrine of benevolent neutrality accepted by the members of the League of Nations. The movement for the strengthening of the Kellogg Pact, then, so far as its first results are concerned, lags behind the conclusions of the contrary movement for the weakening of the Covenant of the League of Nations.

Nevertheless, the present decision of Congress, lends support in advance to the system of sanctions of the Covenant of the League of Nations, intentionally or not. As Professor Eagleton has written, "Such a policy would undoubtedly be of some influence in preventing war, for if the States refused to sell to both belligerents and if the members of the League of Nations refused to sell to the aggressor, the latter would find itself completely deprived of serious assistance."<sup>1</sup>

. In conclusion, if we take as our starting-point the system of the Conventions of The Hague regarding neutrality, we are forced to make the following observations:

(1) That at the present moment neutrality subsists, but that the system of 1907 is obsolete.

(2) That the obsolescence of that system is due to two contrary policies which have affected respectively the Covenant of the League of Nations and the Briand-Kellogg Pact, — a policy of weakening of the Geneva Covenant, a policy of strengthening the Pact of Paris.

(3) That the weakening of the Covenant of 1919 has resulted in the formation of a theory of benevolent neutrality, involving inequality of treatment of the belligerents by the neutral, and directly opposed, by its preoccupation with law and with equity, to the neo-classic conception of indifferent neutrality, exclusively concerned with impartiality.

(4) That the movement for the strengthening of the Pact of 1928 has not yet been able, in spite of the persistent efforts of its partisans, to achieve results establishing the system of benevolent neutrality, that under the terms of the direct interpretation of the Pact given by the United States of America, neutrality subsists and retains its character of indifference, but that the system of The Hague is nevertheless superseded through the adoption of a measure which apparently strengthens it but in reality undermines it by taking from it its chief attraction — the possibility of profit.

(5) Finally, that these two tendencies seem to be converging, so that

<sup>1</sup> The United States and neutrality, *Revue de droit international et de législation comparée*, 1930, p. 929.



it is possible to expect in the near future the moment when neutrality will cease to be a policy of indifference and will become a sanction in international law

## GREAT BRITAIN

(British Co-ordinating Committee for International Studies)

### NEUTRALITY AND THE COVENANT OF THE LEAGUE

by H. LAUTERPACHT

*(a) When there is no Breach of the Covenant  
(or when no Breach is admitted to have occurred)*

The question of neutrality under the Covenant does not admit of a simple answer. To say that the Covenant has abolished neutrality among the members of the League is as superficial and misleading as to maintain that it has not affected it at all.

1. In the first instance, there is room for neutrality — if not indeed a duty to remain neutral — in all cases in which the right of war has not been limited by the Covenant.

2. This last exception leads to the second category (partly overlapping with the first) of what may be called permissible full neutrality namely to the cases in which all or some members of the League, in the exercise of the discretion left to them by the Covenant, arrive at the conclusion that, contrary to the judgment of other members, the hostilities do not constitute "resort to war" in violation of the provisions of the Covenant. For it is axiomatic that under the existing Covenant each member of the League is entitled to judge for himself whether there has taken place resort to war in violation of the provisions of the Covenant.<sup>1</sup> Situations can thus easily arise in which, while there is according to some members of the League a resort to war contrary to the provisions of the Covenant and calling for the application of sanctions, other members are in law fully entitled to declare and preserve their neutral status.

3. Thirdly under the interpretation adopted in 1921 it may happen that a State while sharing with the other members of the League the view that there has been a breach of the Covenant, may be exempted by the Council from participating in the sanctions with the result that its status as a neutral remains for the time being unaffected.

<sup>1</sup> The amendment of the second paragraph of Article 16 of the Covenant, adopted in 1921 by the Assembly but not ratified so far provides that "the Council shall give an opinion whether or not a breach of the Covenant has taken place."



*(b) When there is a Breach of the Covenant*

. What is the legal position in the matter of neutrality in that residuum of cases in which the members of the League have reached the conclusion that a member of the League has resorted to war in breach of the Covenant and that they are therefore bound to fulfil their duties under Article 16? Is neutrality excluded by the terms of an article which provides that the Covenant-breaking State "shall thereby *ipso facto* be deemed to have committed an act of war against all other members of the League"? In the initial stages of the drafting of the Covenant it was assumed that the action against the Covenant-breaker would necessarily assume the form of war

. However, it is doubtful whether the authors of the Covenant adopted this uncompromising attitude. There are indications that the question was faced, and answered, in the course of the drafting of the Covenant. It seems that the present wording was inserted by President Wilson himself, who deliberately substituted it for the original phrase "become at war with". Early in the history of the League there established itself an interpretation of Article 16 which, while not excluding the application of sanctions, rejected the theory that war is the automatic consequence of a breach of the Covenant.

It is clear that this interpretation of the Covenant is an affirmation of neutrality as between the Covenant-breaking State and the members repressing the unlawful resort to war through sanctions. What is equally clear is that there is under this interpretation no room for neutrality in the established sense. Such neutrality has been generally conceived as an attitude of absolute impartiality in governmental conduct.

While, therefore, the Covenant has not abolished neutrality even as between the belligerent Covenant-breaker and the members of the League applying sanctions against him, it has abolished, as among its members, the current conception of neutrality as an attitude of absolute impartiality. It signifies, as a matter of positive law, the return to the conception of qualified neutrality.

In fact it is only such modification of the law of neutrality which makes possible some measure of collective repression of unlawful war not involving a general war in case of unlawful resort to war by one of the members of the group bound by the system.<sup>1</sup>

<sup>1</sup> It is clear from what has been said above that the Covenant has, in a large segment of cases, not affected the status of neutrality in the relations of its signatories, in other cases it merely modified it, neither did it affect it at all in the relation between members of the League and third States. In view of this, persons who repeat the phrase of the Covenant having abolished neutrality justly expose themselves to the impact of the facile erudition of those who point to the fact that no State has abolished its neutrality laws and that the term "neutrality" appears after the World War in a number of general and particular treaties. It was thought for a time that treaties of neutrality concluded by members of the League either with one



*International Law and Qualified Neutrality*

There is in the established notion of neutrality as an attitude of absolute impartiality nothing so sacrosanct or fundamental as to make its anticipatory modification by treaty repugnant in the slightest sense to international law. This may be asserted without accepting the view of those writers and Governments who distinguish between impartiality in military and economic matters. In particular, this distinction was adopted by the Swiss Government prior to the entrance of Switzerland into the League. The view was put forward that neutrality is essentially a relation in the military sphere that armed contest constitutes the essential feature of war and that neutrality is an attitude in relation to that armed contest. It was maintained that a tariff war, the severance of all relations, and a pacific blockade unaccompanied by military measures were not contrary to the duties of neutrality. The argument that in modern warfare the economic aspect is organically interwoven with the military one was met by the assertion that the World War showed that in economic matters the impartiality of most neutrals did not in fact exist and that they were forced to co-operate in the economic measures of the belligerents. However, it is not necessary to express an opinion on the view that economic discrimination is compatible with the modern conception of neutrality. For there is nothing in that conception either from the point of view of antiquity or actual observance, or general principles of international law which entitles it to a special claim of immutability.

The predominant — one might say universal — doctrine in the formative period of the law of nations was directly opposed to the modern "conception."

.. It is clear that the doctrine of absolute impartiality in all circumstances has not struck such deep roots in international law as to remain unchallenged. It was not deduced from its principles. On the contrary it is, like the admissibility of war a denial of the existence of a true legal community among States. Absolute neutrality is in fact a corollary of the institution of war as a prerogative right of sovereign States. In so far as this right exists unrestricted, absolute neutrality follows as a clear duty. There is no room for qualified

another or with third States are opposed to the obligations of Article 16, but there is probably no substance in this opinion. These treaties are as a rule framed with due regard to the contingencies that may arise under the Covenant and, assuming the good faith of the members of the League, need not come into conflict with the obligations of the Covenant. Thus, for instance, the Pact of Friendship, Non-Aggression and Neutrality between Italy and the U.S.S.R. of September 2nd, 1933 provides, in Article 2 as follows: "If either of the High Contracting Parties is attacked by one or more Powers the other High Contracting Party undertakes to observe neutrality during the whole period of the conflict. If one of the High Contracting Parties attacks a third Power then the other High Contracting Party has the right to denounce the present Pact without notice."



neutrality when war on both sides is just The unrestricted right of war is the historical foundation of absolute neutrality

*The Advantages and Disadvantages of Qualified Neutrality*  
*The Problem of Sanctions*

To say that qualified neutrality in a system of collective repression of war is not incompatible with international law, is not tantamount to expressing any opinion on its advantages and disadvantages Its principal asset is that it admits of gradation and elasticity, it permits adjustment of the degree of assistance and pressure to the degrees of responsibility and to the exigencies of the moment, it renders it unnecessary to put into motion a gigantic weapon in order to remove what may be an insignificant cause, it avoids converting a system of repression of war into a system producing a general conflagration in the extreme form of war, it corresponds to the present state of the political integration and solidarity of the international community In fact, it may be argued that it is one of the chief merits of the League that it shows the legal possibility of a collective system in which war is not the only sanction of its breach and not the only means of assistance to the attacked It shows that a collective system and neutrality — or, rather, qualified neutrality — are not mutually exclusive Undoubtedly such a system is less effective than one which excludes neutrality and which renders general war automatic It is a weak collective system

Frequently, the military preponderance of the aggressor will be such that, if confronted only with the forces of the opponent, he will achieve his object in a war of very short duration followed possibly by annihilation and annexation of the attacked State Qualified neutrality in such emergencies becomes a shallow phrase, and collective repression of unlawful war a by-word What will be left is the doubtful operation of the doctrine of non-recognition or of economic pressure after the termination of war in order to compel the aggressor to give up the fruits of victory But this will no longer be a question then of neutrality, qualified or otherwise The dangerous fallacy of qualified neutrality as an instrument of collective action is that it is based on the unlikely contingency that the aggressor will attack a State of equal power, and that in a long war of attrition the indirect help of the neutrals will assist the victim The attacked State may have succumbed long before the effects of economic discrimination will have made themselves felt

. The more integrated international society becomes and the more it approaches the federation of independent States under a world government and constitution, the more incompatible will become the rule of law thus established with the continued indifference (called neutrality, qualified or absolute) of States to its violation by unlawful recourse to



war. The consummation of such a development may be far off but provided that civilisation survives, it will assuredly come.

### *Neutrality in a System of Renunciation of War*

A system of collective repression of unlawful war is, by its very terms, not compatible with the absolute neutrality of its members. It is compatible with qualified and discriminatory neutrality although such compatibility can be achieved only at the cost of the effectiveness and the genuineness of the system. But absolute neutrality in the established sense is in law fully consistent with a system of mere renunciation of war i.e. with a general treaty in which the parties have given up and declared illegal the hitherto sovereign right of war without undertaking at the same time an obligation to suppress illegal resort to war. The Briand-Kellogg Pact of Renunciation of War is such a treaty.

So far as the provisions of this treaty go the rights and duties of neutrality have not been modified as between the contracting parties. Contrary opinions have been expressed from time to time but it may be doubted whether such views are in fact based on the terms of the treaty. A modification of the rules of neutrality to the disadvantage of the State breaking the Pact would have made the Pact more effective, but the principal authors of the treaty have deliberately refrained from endowing it with that sanction. The authors of the Covenant of the League have provided some sanction for the limited renunciation of war contained therein the authors of the Briand Kellogg Pact did not endow the comprehensive renunciation of war with any sanction save the clause in the Preamble depriving the lawbreaker of the benefits of the Pact i.e. of the benefits of the mutual renunciation of war. The United States one of the principal signatories have since the conclusion of the Pact shown in various official acts that they regard the established rules of neutrality as not affected by the Pact. They became a party in 1928 to the Havana Convention on Maritime Neutrality which affirmed in emphatic language the neutral duties of impartiality they ratified that Convention, after ample deliberation, in 1932. In 1934 they adhered to the Anti-War Treaty of Non-Aggression and Conciliation of October 1933 which expressly excluded all direct sanction for the violation of its provisions. The Senate of the United States, in February 1934 amended a resolution empowering the President to declare an arms embargo upon States engaged in war by insisting that such embargo must apply impartially to both belligerents alike.

It is possible that in the case of a violation of the Pact its signatories may feel justified in modifying the law of neutrality by way of reprisals against the wrong-doer but the very notion of reprisals implies that by applying them the States in question would be changing the law



*Neutrality and "Third States"*  
*The United States and the League of Nations*

Similar considerations apply to the question of neutrality of "third States," i.e., States outside the system of collective repression of war. How far can such States participate in the measures adopted by the members of the system without committing a breach of international law? Such participation may assume two forms—it may be either direct participation, or it may be passive co-operation consisting in the toleration of the interference with neutral rights. As the United States is the principal "third Power," it is convenient to limit these observations to the case of the United States in relation to the Covenant of the League of Nations.

The question of the attitude of the United States in the matter of neutrality has in the last fifteen years become the Cape Horn of the organisation of an international system of repression of war. It was the persistent theme of the deliberations of the International Blockade Committee and of the debates of the League Assembly in 1921 resulting in the interpretations there adopted of Article 16, it was advanced as one of the reasons for the rejection by Great Britain of the Geneva Protocol of 1924, it loomed large at the Naval Conference of 1930 and in the disarmament discussions generally, it was largely responsible for the opposition manifested in Great Britain (and elsewhere) against the incorporation in the Covenant of the obligations of the Brand-Kellogg Pact with, it was said, the resulting extension of the obligations of Great Britain under Article 16 and the corresponding danger of a clash between Great Britain and the United States. No doubt these difficulties have at times been exaggerated and seized as an excuse for an attitude of isolation. It has been forgotten that frequently the object of the measures taken against the aggressor is capable of achievement regardless of the obstacles of neutrality.

However, these possibilities cover only one segment of possible contingencies. In particular, they cannot always become operative when the States enforcing the Covenant do not wish to go to the length of declaring war upon the Covenant-breaking State. The difficulty is a real one and can be solved principally in two ways. One is possible without the United States becoming a member of the League. The other combines their membership of the League with the maintenance both of the principal aspect of their traditional attitude and of the possibility of collective peaceful action against the member of the League unlawfully resorting to war.

1 The first solution has already been suggested by a number of jurists. The proposal is that the United States conclude with other States agreements authorising the parties to discriminate, when neutral, against the other signatories resorting to war contrary to the provisions



of the Briand Kellogg Pact. Such an agreement could be concluded in the form of a convention supplementing the Pact. There is no reason to assume that members of the League, who are already bound *inter se* by Article 16 could object to such an express change of the law. This suggestion, it is true, stops short of a treaty obliging the United States to resort to discrimination.

2. The second suggestion is that the United States might become a member of the League under conditions substantially safeguarding their traditional attitude and yet making it possible for that country to co-operate peacefully with other members of the League in their action against the aggressor without committing a breach of international law. The United States might become a member of the League without assuming the obligations of Article 16 (and, possibly of Article 10). At the same time, by adhering to the Covenant they would acquire all the *rights* under Article 16 in particular the right to discriminate against the aggressor without thereby disregarding the rules of international law in the matter of neutrality. They would be in this respect in the same position as all other members of the League. They would not be bound by Article 16 but they would be entitled to avail themselves of its authorisation to repressive and discriminatory action. Such a solution would make it unnecessary to consider the suggestion, which many States might regard as intolerable, that the United States should join the League at the price of the deletion of Article 16. The principal reason for the universal desire to see the United States assume their place in the community of nations organised in the League has been not the abstract dogma of universality but the realisation that without the United States the objects of Article 16 may not be possible of achievement. It would therefore not be surprising if some impatience were shown at the proposals to achieve the entry of the United States at the price of the obliteration of that Article of the Covenant. This is one of the reasons why I venture to submit a proposal aiming at exploring the possibility of active membership of the United States in the League without a substantial abandonment, on the part of the United States, of a tradition to which they still attach significance and without raising the question of depriving the Covenant of a principle which many regard as the very basis of a politically organised community of nations.



## SWITZERLAND

## THE PERPETUAL NEUTRALITY OF SWITZERLAND

by D SCHINDLER (*translation*)

A system of collective security including the repression of recourse to force cannot be schematic because of the diversity of States, and it cannot impose identical obligations upon all. It must necessarily take into account the geographical situation and the special circumstances of each State. Now the geographical situation and the special circumstances of a State may be such that the maintenance of its neutrality is obligatory even during a common action against an aggressor. Such a State may thus not only protect its own interests, but also act in the interest of the collectivity itself. It is worth noting that the Danish Memorandum submitted to the permanent International Studies Conference<sup>1</sup> expresses the opinion that the traditional conception of neutrality is in no degree in conflict with an effective arrangement concerning security, that, on the contrary, it constitutes an indispensable element of such an arrangement. And Article III of the Argentine Pact binds the neutrals, in the interest of the maintenance of peace, to a "common and solidary attitude," which could not, however, take the form of a diplomatic or armed intervention. Without undertaking a thorough examination of the question whether such a system affords a sufficiently strong foundation for collective security, the attention of the permanent International Studies Conference must be called to the absolutely unique case of Swiss neutrality. To set forth the juridical situation of Switzerland as it is consecrated in her perpetual neutrality is to set forth at the same time the attitude of Switzerland and of Swiss public opinion relative to the question of collective security.

Neutrality has been, for more than four hundred years, the traditional attitude of Switzerland. In 1815, it was formally recognised by the Powers present at the Congress of Vienna. The Powers at that time recognised, among other things, "that the neutrality and inviolability of Switzerland and her independence of all foreign influences are in the true interest of the policy of the whole of Europe." By Article 435 of the Treaty of Versailles, the guarantees stipulated in favour of Switzerland by the Treaties of 1815 were recognised as "constituting international obligations for the maintenance of peace" in the sense of Article 21 of the Covenant of the League of Nations. Finally, the Council of the League of Nations, in its session of February 13, 1920, passed a resolution in which it recognised "that Switzerland occupies a unique situation, based on a tradition of several centuries which has

<sup>1</sup> See above, p. 402



been explicitly incorporated in international law and that the perpetual neutrality of Switzerland and the guaranty of the inviolability of her territory as they are specified by international law notably by the Treaties and the Act of 1815 are justified by the interests of general peace and are consequently compatible with the Covenant."

The Swiss people regards neutrality as the basis of its independence and of its security<sup>1</sup>. It is a principle which is incorporated in the Federal Constitution, and it is from the viewpoint of neutrality that the Swiss have long been accustomed to consider the problems of foreign policy. Swiss neutrality is not an occasional but a permanent institution. It has nothing in common with the neutrality which is dictated exclusively by considerations of expediency. Being a matter of principle, it is a permanent policy characterised by the absolute security which it is capable of inspiring on all sides. It is maintained in all cases and thus constitutes an absolutely invariable factor in strategic calculations. The perpetually neutral State abandons the possibility of exploiting its advantages at the favourable moment by an unforeseen participation in a war. It is not indifferent, but it tends to be impartial.

In entering the League of Nations, Switzerland did not abandon this political maxim, whose value has been proved to her satisfaction by an age-long experience. It is indispensable to her in both foreign and domestic policy. To participate in a war between other States means for Switzerland the almost certain prospect of seeing her entire territory turned into a battlefield. Surrounded by several very powerful States, Switzerland, if she were involved in a modern war would risk, more than any other country in the world, complete annihilation. Even in the course of a long war a large State can hardly be altogether destroyed. Many States, thanks to their remoteness from the points menaced by political conflicts, or to their outlying situation far from the centre of the continent are less exposed than others to the danger of becoming the theatre of war. Even if they take an active part in a campaign, the war affects them only in a restricted measure. A country like Switzerland, on the contrary placed in the centre of the continent might have to sacrifice at one stroke her whole territory and her entire population, and that even if she took no active part in operations. The mere necessity of allowing a right of passage through her territory to the armed forces would be enough to expose her to this risk. Even in reserving her neutrality a country like Switzerland runs greater risks than other States which may have sacrificed their neutrality to the League of Nations. That is why in asking the right to remain neutral, Switzerland by no means made an unfair demand, nor claimed special

<sup>1</sup> Cf., for what follows the Message of the Federal Council to the Federal Assembly August 4 1919 and the Memorandum of the Swiss Federal Council relative to the neutrality of Switzerland, February 8 1919.



favour All that she asked was an equitable distribution of risks and obligations

Furthermore, neutrality is one of the essential conditions of the internal peace, of the union, and consequently of the independence of a nation made up of elements which differ in language and culture.

The maintenance of this ancient institution is as precious for Europe as for Switzerland herself The Helvetic Confederation is and must remain the faithful guardian of the Alpine passes In the World War as in 1870-1871, neutral Switzerland was able to render much greater services to mankind than if she had entered the struggle The situation which she has obtained within the League of Nations corresponds to that occupied in the old Swiss Confederation by the Cantons of Basle, Schaffhausen and Appenzell . constantly neutral States, they were able to play the part of predestined mediators Modern Switzerland has still another decisive reason for remaining neutral for the State which contains the seat of the League of Nations, neutrality should be considered a political duty Otherwise, the quarrels of that State might result in imposing on the League of Nations a state of war contrary to its will and to its statutes

The juridical situation of Switzerland is unique and cannot be transferred to other States It offers an interesting example of neutrality recognised and guaranteed in a system which includes the repression of recourse to war In the maintenance of this neutrality in the system of the League of Nations, due consideration was given to the geographical situation and the special circumstances of Switzerland. For other States, other solutions must be found, in order to harmonise the necessities of a system of collective security with the requirements arising out of the special situation of each State



## B — DISCUSSION

*The Conference devoted the end of the Fifth and the beginning of the Sixth Study Meetings to an examination of the problem of neutrality within a system providing for the repression of resort to war. Mr ALLEN W DULLES presided and called first upon Professor SCHINDLER to speak.*

Professor DIETRICH SCHINDLER, Swiss Institutions (*translation*)

In presenting to the Conference a few observations on the subject of neutrality in a system providing for the repression of resort to war I wish to take as my point of departure the first two questions formulated by M. Maurice Bourquin in his general report.<sup>1</sup>

There are various methods which might be followed in attempting to reply to these questions. The problems raised may be considered either as primarily legal problems or as primarily political and sociological problems. I shall take the liberty of following both methods, and shall examine first the legal aspect, that is to say the question whether a neutral State can apply sanctions without abandoning its neutrality. In other words, are there sanctions of such a nature that the States applying them can avoid taking part in hostilities? This is a legal question. In any case, I should like to begin by considering it as such. An answer to it implies, therefore an examination of the law of neutrality.

If we wish to frame a correct judgment on the significance of neutrality and on the extent to which it is reconcilable with the obligations which arise out of a system of collective security it is necessary to distinguish between two spheres of action of the neutral State, one governed by the law of neutrality the other left to what may be called the policy of neutrality. The law of neutrality is the body of international rights and duties which are inherent in the state of neutrality. The policy of neutrality on the other hand, is the attitude of a neutral State in matters which are not governed by the law of neutrality. The way in which a State manages its policy of neutrality is a question of political judgment. It is the field in which the neutral State can claim entire liberty with respect to the belligerents and in which it may be favourable or unfavourable to them depending on their attitude.

Neutrality has always appeared, in international doctrine and practice as an essentially military conception. The fact that an armed Power is at strife with another armed Power is the essential feature of war considered as a relation in international law. A mere tariff war the breaking-off of all relations, and even what is called peaceful blockade do not give rise to any legal relation of neutrality.

Apart from Articles 7 to 9 of the Fifth Convention of the Hague

<sup>1</sup> See above p. 27



which concern commerce in war materials and the use of telegraphic and telephonic means of communication, no text obliges neutrals to accord the same treatment to the two belligerent parties nor to maintain economic relations with them. Except in regard to the freedom of maritime commerce of neutrals, the conditions of what is called economic warfare are governed neither by conventions, nor even by positive principles established by custom. The law of neutrality does not oblige the States to observe economic neutrality in favour of belligerents. There is such a thing as economic war, but there is no economic neutrality.

Consequently, the neutral is authorised by the law of neutrality, within the limits imposed by that law, to take part in an economic blockade against the aggressor. It is true that this attitude on the part of the neutral, though it is not contrary to international law, may be a cause of strained relations between it and the aggressor. If the latter finds it to its interest to violate neutrality, the differential treatment may provide it with a pretext. It seems important, therefore, that the neutral States, as Mr McNair proposes on the same page of the general report, before applying economic sanctions, should conclude defensive alliances to protect themselves against the risk of an attack by the State which has violated the Covenant.

But this brings us to examine our problem on the basis of considerations which are primarily sociological. Before we begin, let us note that, under the regime of the Covenant of the League of Nations and of the Briand-Kellogg Pact, neutrality has not become an obsolete conception.

It is unnecessary to discuss this point in greater detail, for it is enough to refer to the memoranda presented to the Conference, and especially to the report of Mr Lauterpacht,<sup>1</sup> published as United Kingdom Memorandum No. 3.

Our present task is rather to discuss the principle of the compatibility of neutrality with any system of collective security.

We must take care not to give a categorical answer to this question, for it is impossible to give the same answer for all States and for all situations. International life lends itself only to a limited extent to uniform regulation, and the more intimately a situation affects the vital interests of a State, the more it is refractory to a general and abstract settlement. This is one of the many differences between internal law and international law.

M. Raestad, in his memorandum, rightly criticised the excessive degree of generalisation which is often to be observed in discussions of a political and social nature.

Collective security in the international field cannot, in fact, be copied exactly from the model of collective security within a State. The State may, under certain circumstances, require of the individual the

<sup>1</sup> See above, p. 412.



sacrifice of his life in the interest of the collectivity. In this case, individual security is strictly subordinated to collective security. There is nothing of the sort in the international field. Collective security is here the complement of individual security and cannot be in opposition with it. The collectivity of States cannot ask a State to sacrifice itself completely in the interest of the collectivity. Collective security is not a good in itself. It is merely the security of all and of each. No conceivable system of collective security can have any other aim: individual security must be increased and not compromised.

The obligation to take part in sanctions has therefore, its limits: the State which lends its aid against the aggressor must not, by so doing, place itself in a more dangerous situation than the State which is victim of the aggression.

Now the geographical situation and the special circumstances of a State may be such that the preservation of its neutrality is essential even during a common action against the aggressor. The State in question may by this attitude, not only protect its own interests, but also act in the interest of the collectivity.

In fact, there are at least two hypotheses in which neutrality is justified: (1) if the neutrality of a State is necessary because its participation in war would place it in imminent danger of being completely destroyed; and (2) if the neutrality of a State forms an essential element in a system for the pacification of a part of the world.

Let me give some examples.

The situation of a very small State which is neighbour to a powerful State against which military sanctions are being directed is an example under the first hypothesis. To participate in a war of this sort means for such a State the almost certain prospect of seeing its entire territory converted into a battlefield. A large State, even in a prolonged struggle, can hardly be attacked and destroyed completely: even if it participates actively in a campaign, it is not called on to sacrifice its whole territory *and its entire population*. That is why a small State, in remaining neutral, is not claiming a special privilege: it is merely asking for a fair distribution of the risks and burdens.

The situation of Switzerland provides an example under the second hypothesis — and under the first too, as a matter of fact. Its neutrality constitutes an essential factor in the system for the preservation of peace in central Europe.

If I mention this case here, it is not because I consider Swiss neutrality as a very important institution for international law in general — though it is very important indeed for Switzerland herself — but because it forms a very clear example of the adaptation of law to a situation of fact. In this case the facts are political and geographical in character.

For more than four hundred years neutrality has been the traditional attitude of Switzerland. This is conclusive evidence that it is in fundamental accord with her special situation, that it is the exact expression



of that situation, and that it is anchored in the conceptions of the nation. In 1815, it was formally recognised by the Powers assembled at the Congress of Vienna, this recognition was renewed by the Treaty of Versailles, Article 435, and by the resolution adopted by the Council of the League of Nations on February 13, 1920.

Neutral Switzerland wishes and ought to remain the guardian of the Alpine passes, by remaining neutral she can also render greater services from the humanitarian standpoint than if she entered the combat.

If I have taken the liberty of calling attention to Swiss neutrality, it is not for the purpose of eulogising my country, but to point out a specific case of one of those regional agreements which ensure the preservation of peace, referred to by Article 21 of the Covenant of the League of Nations. These regional agreements are merely the negative corollary of the regional pacts of military assistance which were spoken of yesterday. Instead of promising military assistance to a certain State, the perpetually neutral State promises all the States concerned that it will never lend military aid to their possible enemies. This negative promise forms a very dependable factor in any strategic calculation, more dependable probably than any positive promise. In this sense, it is an element of collective security, as much and still more than a positive promise.

This concrete case proves perhaps better than all other examples that the problem of collective security and of neutrality cannot be given an identical solution for all States and for all the parts of the world. It demonstrates that every region and even every State has its particular problems, and that, in order to attain a maximum of collective security, it is necessary to examine as carefully as possible the situations of fact and the realities of history before working out the texts of treaties.

There are situations in which the maintenance of neutrality — especially a perpetual neutrality — is fully justified, there are also others where this is not the case. There can nowhere be question of subordinating the interest of a State to the alleged interest of the collectivity, or *vice versa*, the problem is to attain in every case a synthesis of individual security and the general interest.

Professor JESSUP, Council on Foreign Relations, New York.

I have been very much interested to note the change in the attitude towards the subject of neutrality within the past few years. For many years after the close of the war, it was a subject ostracised in discussions in the United States, and I think also in Europe. That attitude has quite changed. I suppose no subject dealing with international affairs is more discussed in the United States to-day than the subject of neutrality.

I remember very well the words which were firmly uttered to us by some of our French colleagues at the meeting in Paris last year. "*La*



*neutralité est une idée périmée* and I was therefore much interested to see the words of Professor Schindler which he has just repeated, as contained in his memorandum *La notion de neutralité n'est pas une notion périmée*"

Professor Schindler has also referred to the documentation which we have on the subject. I do not want to go again over that ground. I feel that it adequately presents the legal and practical possibility of the continued existence of neutrality in certain situations.

There are cases in which the collective system and the application of sanctions may make the return to the traditional system of neutrality inappropriate. I hope very much that that development will continue, and that we shall have in such situations a system of neutrality which will have less of the traditional impartiality.

On the other hand, though we may disagree as to the number of instances in which the collective system of sanctions can successfully be applied, in which the aggressor can be defined, I think we must in all fairness admit that there is at least a possibility that a situation may arise in which the family of nations will be not unanimous in defining the aggressor and in which sanctions will not be collectively applied. We have had in the past some indications that such a situation may possibly arise.

It is those cases to which I want to address myself and it seems to me there that what we need is not less impartiality towards the belligerents but more impartiality on the part of neutrals.

It is of course, well recognised that in the past it has been possible to have legal impartiality and factual partiality as was well illustrated by the case of the United States during the war of 1914-17. As Dr Cohn suggests very effectively I think, in his memorandum,<sup>1</sup> it is perhaps a question of partiality against war and of impartiality in one's treatment of the belligerents.

I look upon neutrality not merely as a method of war avoidance for States which do not desire to be embroiled in the struggle. It seems to me that neutrality unconsciously in the past and perhaps consciously in the future may offer another string to the bow of the collective system and provide a means for ending war or for limiting its scope when other forms of collective action for the postponement or the repression of war have failed to operate successfully.

Neutrality traditionally and I think even more in the past has been justified as a means of limiting the scope of war and of limiting its duration.

If it is appropriate and if it is possible to apply a system of economic sanctions, to apply an economic boycott against an identified aggressor why is it not possible to have a united neutral front against two unidentified aggressors or against two belligerents where judgment has not been reached as to which is the guilty party? Why is it not possible



to follow the example of the action of the League in the Chaco affair, where at least in the earlier stages an embargo was imposed upon both belligerents prior to a judgment as to which party was at fault? This, I think, is the form of co-operative action which is contemplated by the Argentine anti-war pact of 1933, to which one of the speakers referred yesterday

That pact does not contemplate a return to the system of armed neutrality, it contemplates unified and solidary action without armed intervention in the struggle

I think the experience of the last war, particularly in the matter of economic organisation and co-operation, affords a great many interesting possibilities for further study, which have not yet been sufficiently explored, and which would make it feasible to develop a form of unified neutral action in such cases as I have been discussing

During the last war there was an attempt on the part of the Scandinavian neutral States to reach a co-operative basis. There was a suggestion from the Scandinavian countries to the United States that all the neutrals should act together. That invitation from the Scandinavian countries was not accepted by the American Government. The result was that the economic and financial pressure of the belligerents could be directed individually at each one of the neutral Governments, and the opposition of the neutral Governments was very much more ineffective than it might otherwise have been

If there had been during the last war a group of allied and associated neutrals with an economic and financial general staff, the situation of the neutrals vis-à-vis the efforts of the belligerents to control their economic life would have been quite different. I do not think that such co-operation is an impossibility

It is true that belligerents allied to belligerents have a much stronger motive for bringing themselves together and developing co-operative processes. Nevertheless, a group of neutrals has a stronger motive of self-interest in adopting a solidary attitude and a united front than has a group of nations engaged in the application of sanctions under Article XVI of the Covenant, because that self-interest of the neutrals is an interest not only in avoiding implication in the war, not only in endeavouring to shorten the duration of the war and to limit its scope, but also the protection of their own economic and financial life. That motive is a very strong one, which may induce to some form of co-operation

In all past wars we have had not only the war of one belligerent group against the other belligerent group, but also a very real economic war between belligerents and neutrals, and that situation is not going to be eliminated in my opinion in the future unless some different system of neutrality is created

Neutrals have thus found themselves driven into a position where they are primarily concerned, or at least very largely, with the desire



of increasing their own neutral profits during the struggle. In some cases they have been extremely successful in that in spite of the action of belligerents in violation of their legal rights.

That motive of securing neutral profits, I think, is not going to be eliminated merely by some devotion to a collective system. It seems to me, however, that it may be brought into line and utilised in the development of a collective neutral system, which can apply in those situations where the other aspects of the collective system and the application of sanctions have failed.

I should like to suggest therefore that one of the most profitable fields for investigation and study in connection with the subject of neutrality is the utilisation of neutrality as a form of collective action for the repression of war in cases where other types of collective action based on the identification of an aggressor have failed, and where they are impossible of application because that type of machinery has not worked successfully in a particular case.

I should merely like to add in closing that from the point of view of the United States at the present time it appears to me that the attitude which many would like to see of less impartiality on the part of the United States in cases where the members of the League are united in applying sanctions against a defined aggressor that attitude of co-operation on the part of the United States is much more likely to eventuate if it is possible in anticipation of the application of such a situation to agree upon some form of neutral status, of neutral rights which will be applicable in situations where that unanimity does not exist.

Professor SIR ALFRED ZIMMERN Geneva School of International Studies

I just want to put a question to Dr Jessup arising out of his very interesting remarks. When he began his speech, my conception of a neutral was of an anti-social being leading an isolated life. By the middle of his speech I had begun to think of the neutral as a social being in a society of States. By the end of his speech I got the conception of a neutral not only as a social being but as a social being ready to act vigorously on behalf of his social principles.

He mentioned the Chaco case and spoke of the embargo. The question I want to put to him is this. Are the members of the neutral front going to enforce their own embargoes? How will they deal with the other members of the neutral front with the State or States who are, for instance, unable to restrain their own merchants from selling to the belligerents?

Professor JESSUP Council on Foreign Relations, New York

There are, of course, very many details in this subject. I have only been working on it for about six years, and I do not pretend to have examined but a very small part of them as yet.



In regard to the specific point Professor Zimmern raises, my idea would be that whether you look at it from the point of view of a collective system with the neutrals exercising social responsibilities, or from the point of view of neutrals guided entirely by self-interest and desiring to protect a certain amount of their trade during war, the same actual handling of Professor Zimmern's situation might follow

Personally, I am quite ready to follow Professor Zimmern's line of thought in considering it the exercise of a social obligation. I believe if the neutrals are to claim that they have a right to exercise this united position and to stand upon certain of their rights, and to influence the duration or the spread of the war, that they must accept the duty of seeing that their embargoes on belligerents are not violated by members of their own group

It would seem to me that a possibility would be this. Taking the Chaco, for instance, if one of the border States A does not live up to its embargo obligations and permits arms and munitions to pass over its frontiers to the territory of one of the belligerents, the other neutrals should, I think, group State A with the belligerents, applying to State A the same type of embargo which they apply to the belligerents themselves, perhaps extending it in the sense that with regard to the belligerents the embargo might primarily be on arms and munitions, whereas in regard to State A violating this it might have to be extended to an embargo on other objects which would be of more importance to State A

It is only by accepting some obligation of that kind that the belligerents could be induced to depart from traditional notions, and only thus that the neutrals could exercise a real influence in shortening the duration and narrowing the spread of the war

DR LAUTERPACHT, British Co-ordinating Committee for International Studies

I have thought it wiser to abandon what I thought would be my constructive contribution to this discussion, partly for reasons of time, partly because of what has been said in this discussion

There is a widespread belief not only among those who disbelieve in collective security but among those who believe in it, that our original attitude to neutrality has been undergoing, and ought to undergo, a change

In 1920, when the Council of the League dealt with the application of Switzerland for admission to the League, it expressed the view that neutrality among members of the League is inconsistent with the mutual obligations which they owe one to the other. But there has been recently an increased tendency to believe that the view enunciated in 1920 is wrong, that neutrality ought to be resuscitated, that it is not inimical to the system of collective security, and that, as we have heard to-day,



it may in fact be regarded as one of the factors which in some circumstances may be beneficial to collective security

In view of this I shall venture to refer to what I believe to be the fundamental aspect of the matter. Collective security is nothing less than a system the members of which mutually agree not to be neutral in cases in which one of the members of the system is attacked by another through unlawful resort to force or war. This is to me the fundamental factor. I therefore believe that, broadly speaking, neutrality and collective security are mutually inclusive: the more there is of the one the less there is of the other.

Before the War such a system of collective security would have simply meant that the third State is bound to go to war against the State which has broken the pact. Nowadays, owing to the innovations introduced by the Covenant of the League, the situation is different and thus abandonment of neutrality may range from a declaration of war through economic sanctions to mere moral disapproval. Accordingly it is useful in discussing the relation of collective security to neutrality to remember that that question may be differently settled in different systems of collective security. For the purposes of this Conference the most convenient method is to discuss one definite system namely the system established by the Covenant of the League.

The two leading features, in this matter of the Covenant are pretty generally recognised. One is that in a large sector of cases, the Covenant of the League has not affected neutrality at all. These are, broadly speaking the cases in which war is not prohibited or in which members of the League are of the opinion that a particular resort to force does not constitute war. The second is that in a smaller sector of cases, the Covenant of the League has vitally affected the orthodox conception of neutrality by permuting so-called qualified neutrality. I need not elaborate this point. This latter change is doubtless fundamental, but the fact remains that the Covenant, as it stands now does not give many opportunities for the realisation of this change: that is to say to put it in more simple words that according to the Covenant as it stands neutrality may be regarded as the normal attitude of the States. This is for the reason that the Covenant has only very little affected the foundations of the orthodox conception of neutrality. There were two bases of the orthodox conception of neutrality. The first was the admissibility of war. Now the Covenant has not abolished war as you know. The second was the absence of an agency to determine whether a State has gone to war contrary to international law. Even for those who believed in the distinction between just and unjust war neutrality was necessary on the ground that there was no one to ascertain whether the war was just or unjust. This situation has not been changed in the Covenant for the simple reason that in this matter there is an obvious principle of anarchy enshrined in the Covenant. In the first place it is for each member of the League to determine



whether resort to war has taken place; and, secondly, under the Covenant each member of the League, when determining whether resort to war has taken place, is not assisted by any authoritative definition laying down what resort to war is. These are the two principal factors in the situation. Both of them must be faced if the Covenant, by reducing the possibilities of full neutrality, is to become a better system of collective security than it is at present.

In the first place, repeated emphasis must be given to the ideas which inspired the Assembly of 1920 when it suggested in one of its Resolutions that the Council shall have the right to give an opinion on whether aggression has taken place. Secondly, further attempts must be made to arrive at a definition of "resort to war." This is, in effect, a definition of aggression for the purposes of the Covenant. The question of that definition is closely connected with the question of neutrality on the ground that one of the reasons why full neutrality is permissible under the Covenant is that there is no definition so far of resort to war.

The view that a definition of aggression is sound in law and feasible in practice has not yet become the orthodox view in this country. But it would be a mistake to assume that it is an isolated view. I am therefore glad that Professor Webster mentioned that Dr Dalton's views favouring such a definition are only his (Dr Dalton's) own. By the same test the rejection of the definition as advanced by Professor Webster represents his views only. The British Government, which for a number of years was averse to any attempt at a definition, submitted in 1932 to the Disarmament Conference a draft in which it proposed a definition of resort to war differing in one point only from the definition of aggression in the Soviet treaties.

I would therefore deprecate too dogmatic an attitude of negation towards a definition of aggression. The arguments against the definition are very effective in debate for the simple reason that they are based on exceptional situations. But I venture to submit, that on the whole, the development must be in the direction of such a definition for the reason that it makes for certainty, and also renders it difficult for States to identify self-defence with the defence of any particular interest to which that State attaches importance. I agree that a definition of aggression means a further limitation of the freedom of action of the members of a system of collective security. But a system of collective security is in essence a system in which our freedom of action has been abandoned. We cannot remain bound and free at the same time. If we pretend that we are, we are simply adopting the same ways of artificiality and evasiveness which has characterised the instruments of pacific settlement in the last thirty years.

The second question to which I venture to draw the attention of the Conference, in particular in connection with what Prof Jessup said, is the question of the neutrality of States which are not members of the League in its relation to collective security.



While the Covenant is a defective instrument of collective security it is nevertheless an important the most important, and, at present, the only instrument of collective security. Its potentialities as such are great. It has adopted economic sanctions as a matter of undoubted legal obligation for members of the League. These economic sanctions, although it may often be impossible to apply them on account of the lacking universality of the League, are a powerful weapon which on many occasions may help to implement the purposes of the Covenant. But because of the possible attitude of States which are outside the League, especially of the United States there has been a tendency in the last ten years to whittle down the possibilities of economic sanctions and to abandon the constructive and deliberate shaping of these sanctions as an instrument of international action. We have in the matter of sanctions and neutrality evolved the phenomenon which we frequently see in international law namely the reduction of possible action to the lowest common denominator. The efforts to codification at the Conference on Codification at The Hague had to be reduced to the lowest common denominator in order to secure agreement on the part of States which were not necessarily the most progressive ones. The same has happened in regard to sanctions. This tendency ought to be deprecated as inimical to the idea of collective security. We must pray and hope that the attitude of the United States in this matter will undergo a change so as to make it possible for the members of the League to believe that in any future contingency in which there will be unanimity about the breach of the Covenant, the United States will not impede the common action taken by the members of the League. The latter ought by every effort at their disposal, to make it possible for the United States to change their policy in that direction. But we must realise that that change is not a matter of the immediate future. Care must be taken not to reduce the level of common effort for collective security because of that possible attitude. Our active influence on the attitude of the United States is necessarily small. It is small for the simple reason that the interest of the United States in collective security is not a direct one. It is an indirect one. It is not of the same nature as the interest of some European States.

In the matter of collective security and the neutrality of the United States we have to face unpleasant realities. This is the net result of Professor Jessup's contribution to this part of the debate and of the preparatory work of the Conference. He told us in effect that what we can hope from the United States or from the States bound by the anti-war treaty of 1933 is that in cases in which it will be impossible to determine the aggressor *i.e.* in cases in which the collective system will have broken down, the United States and other allied States will penalise equally both belligerents.

In view of what I regard as a disquieting tendency in the opinions of statesmen and soldiers in the matter of neutrality as related to col



lective security, I should like to conclude by making one observation of a general nature. British international lawyers, like Lorrimer and Westlake, regarded neutrality — before there ever was a system of collective security and of solemn international obligations to that effect — as a legal monstrosity and a moral turpitude. We are meeting at a time when the potential progress embodied, in this matter, in the Covenant has suffered a set-back. But I venture to think that it is not for lawyers to say that this set-back is decisively determined by any permanent reasons of legal relevance.

LORD LYTTON, British Co-ordinating Committee

In the learned speeches we have listened to on the subject of neutrality, there have been many references to the Covenant of the League of Nations and its effect upon the doctrine of neutrality, but so far as I am aware there have not been references to the Briand-Kellogg Pact and the influence of the signing of that document upon the doctrine of neutrality.

I am not a lawyer, but speaking as a layman it would seem to me that if all the nations of the world — and here we are dealing not only with those who are members of the League — have signed a treaty in which they have renounced war, and war subsequently takes place, one party at least must have committed an international crime.

The question I want to put to the learned professors in this room is, whether it is possible for international society to be neutral toward the commission of an international crime?

I only rise to put that question in the hope that those who will follow me in the discussion will devote rather more attention to the effect on the danger which we are discussing of the signature of the Briand-Kellogg Pact.

Professor MITRANY, British Co-ordinating Committee

I should like to bring into the field of real politics the proposition which Professor Jessup and Dr. Lauterpacht have affirmed.

I agree that we ought to be grateful to Professor Jessup for his frank attitude. I cannot say that I like it. As Dr. Lauterpacht said, the collective system to be real and effective and to introduce a new society, means, something under which its members undertake to do something positive in case of need. It is not only a moral question. It is also essentially a question of fact, because without that I do not see how you can get nations to abandon their means of individual protection if you do not supply them with the alternative means of collective protection. A benevolent attitude from a distance is not good enough.

What is the result of an attitude such as that put forward by Professor Jessup? You are simply offering to the aggressor nations just those



circumstances which it would desire to have. It leaves the weaker at the mercy of the stronger.

If I should have at my next visit to the United States an encounter with one of Mr. Capone's henchmen, would it be very useful to see a policeman regulating the traffic so that my assailant should not be disturbed?

However, since we cannot hope to achieve a perfect union, we must try to achieve a *mariage de convenance*. In that respect there is a gleam of hope in certain views which have recently come to birth in the United States, namely that kind of attitude which says that the United States should abandon the old notion of neutrality for the sake of the ideas described by Professor Jessup. The old notion involved two elements: first, the desire to keep out of war; second, the desire to collect the benefits of peace to which Professor Jessup referred this morning. That was the attitude embodied in the idea of the freedom of the seas as put forward by President Wilson.

If however you have this new idea, by which a State declares itself willing to forego the profits of neutrality not as an interest in collective security but for the sake of keeping out of the war — to renounce the second part of the old neutrality in order the better to keep the first — then there is great hope of finding some adjustment between those two systems which will have to live side by side, somehow or other until they can amalgamate.

Professor JESSUP: Council on Foreign Relations, New York

Mr. Chairman, I would not really suppose it to be necessary but certain members of the British Group have taken pains to point out that some of their colleagues have spoken only for themselves, and that no one else in Great Britain agrees with what they have said. I can assure you most emphatically that if a great number of my American colleagues were here, they would assure me that they utterly disagree with what I have said and that my views are solely my own. I should say there is a very small number of people in the United States who would be willing to agree with all I have said.

In regard to the point Lord Lytton raised concerning the Pact of Paris, some comment was made on the effect of that pact upon the obligations of neutrality in some of the preparatory memoranda.

I might briefly say why I believe that, even as the Covenant of the League has not caused the system of neutrality to disappear the same is true of the Pact of Paris and for this reason — and it is a reason which I should like to stress again.

In my remarks this morning I tried to emphasise that I was considering neutrality in situations where the present international system of collective security broke down. If our present system, including the identification of the aggressor and the application of sanctions worked,



we should change our attitude to neutrality and not retain the old notion of impartiality. But though it is quite possible the system would not work, that we could not decide which State was resorting to war unjustly, in those cases neutrality was still possible.

In Professor Mitrany's case, I would be perfectly willing to give him the benefit of the doubt and say in his encounter with Al Capone's gangster, that the gangster was the aggressor. But if a policeman came on the scene and found them both struggling, he would take them both off to the station house until a magistrate had decided which was the aggressor.

So in the international field, where the nations are at each other's throats, it may be that they both have resorted to war; or it may be that because of the defects of the international organization, we cannot determine which one of them violated its obligations under the Pact of Paris or under the Covenant. In those cases I see no alternative for the other nations of the world but to adopt what Dr. Cohn suggests is an attitude of impartiality against war and apply through the function of neutrality some collective system against both belligerents.

Professor McNAIR, British Co-ordinating Committee.

I should like to attempt a reply to Lord Lytton's legal enquiry regarding the relation of the system of neutrality to the Briand-Kellogg Pact. That matter was studied at Budapest last year by the International Law Association, who adopted a series of resolutions upon it. I do not propose to discuss those resolutions, the more so because I have the feeling that they are a little optimistic.

But the outstanding fact about the Kellogg Pact from the legal point of view is this, that for the first time in the history of the world, when one State begins against another State a war, which is in the common judgment of the world, war used as an instrument of national policy, that State so beginning that war has committed a wrong, a legal wrong, namely a breach of treaty, against every other signatory of the Kellogg Pact.

That is a very striking fact, and an entirely new fact, and I do not think that the full implication of that fact has yet been realised.

With regard to its bearing upon the system of neutrality, in my humble judgment that may be stated as follows: when a legal wrong has been inflicted upon a State, that State is entitled to take action. I will not specify what action, it is entitled to take action. That action is often called reprisals. At any rate it has a legal right to take some action. The effect of a breach of the Kellogg Pact seems to me to have this legal effect: it cannot be said to oblige all the other States to depart from their neutral attitude, but it can be said to justify them in modifying the law of neutrality. It may be that in so doing they would commit breaches of the traditional law of neutrality, but their justifi-



cation for so doing would be the fact that they are doing it in return for a legal wrong inflicted upon them. Hence it is likely that in the event of such a war the system of neutrality would be profoundly modified.

Professor LUDWIK EHRLICH, Central Committee of Polish Institutions of Political Science (*translation*)

I approve the observations presented by Mr McNair all that our eminent colleague has said seems to me to be true.

I agree first of all with what was said this morning, namely that in international law one should not make too great a use of abstractions. To do so is useless, dangerous and objectionable. These abstractions may become too numerous. We should not limit ourselves to concrete situations either we must endeavour to do a little more than to settle individual questions.

In the second place, naturally I am opposed to treating questions of international law from a too purely legal viewpoint but it may also happen that they are not enough examined from this legal viewpoint and that the method is too often applied to legal problems which I call the method of the amateurs, of the dilettantes. This method consists in taking an article of a treaty and beginning to deduce from it, in an "amateurish" manner, consequences which do not follow from it, while refusing to deduce from it other consequences which ought to follow from it.

Again, I recognise that the present practice of the States is based on the conception of sovereignty. That means, to my mind, that if a State is to be bound by a rule it must first accept that rule conversely having accepted a rule, it is bound by it, and must not, by measures of resistance which are quasi-legal and quasi-civilist, try "to wriggle out of it," — try to work free of it by tortuous methods.

On these premises, I base the following conclusions.

(1) Under the regime of Article 10 of the Covenant of the League of Nations there is no neutrality in the sense that this word had in 1912 or 1913 the States which have signed the Covenant are obliged to respect and to defend against all aggression the territorial integrity and the political independence of all the other Members of the League. This is an absolute rule.

What forces must be placed at the disposal of the injured State is another question, just as a State may agree or not agree to supply these forces but no one has the right to say. This war does not concern us. As Mr Jessup said, it is possible that one may not know whether the aggressor is State A or State B but the situation here is like the situation with regard to the law governing cheques no one rejects the institution of the cheque on the ground that perhaps in a particular case the account is overdrawn at the bank for in the great majority of cases the cheque will be honoured.



(2) There is, in my opinion, no neutrality under the regime of Article 16 of the Covenant. It may happen that a doubt may arise as to whether an act of hostility has really been committed, but in so far as the facts can be proved, Article 16 exists, and the conclusions to be drawn from the facts are clear. Must a regiment be sent, or a warship? These are accessory questions. But in principle, the neutrality of 1912 is no longer permitted under the regime of Article 16 of the Covenant.

(3) Finally, if I am thus far in agreement with Mr. McNair, perhaps my eminent colleague will agree with me if I say that he has not pursued to its ultimate conclusion the thesis which he has submitted to us. In principle, there is no neutral attitude either under the regime of the Briand-Kellogg Pact for the States which have signed that pact. On this point, in my opinion, no doubt is possible.

State A will perhaps refuse to send troops, while State B will send an army; but this is a distinct question. What I mean to say is that the neutrality of the period before 1914, as we studied it in the manuals, is not compatible with the principles of the Briand-Kellogg Pact.

Finally, I agree with Mr. McNair in thinking that if Article 16 of the Covenant commands that a State be aided by economic measures, this is not the case in the Briand-Kellogg Pact.

Finally, I agree with Mr. Jessup in thinking that even if there are doubts as to who is the aggressor, the duty involved in Article 16 of the Covenant of the League of Nations as well as in the Briand-Kellogg Pact, is to maintain a sort of neutral attitude, in the sense that each does his best to keep the peace and to see that it is kept. But here again, it is no longer the neutrality of 1912 or 1913, it is a totally different neutrality, which does not observe the traditional principles. It is no longer possible to say "Here are two States fighting with one another, let us leave that pleasure to them. For our part, we shall merely look out for our individual interests." The neutrality which Mr. Jessup spoke of is something different. We should perhaps find a word to designate this new neutrality so that there may be no confusion between the two conceptions.

Professor RENÉ CASSIN, Commission française de Coordination des Hautes Etudes Internationales (*translation*)

I share most of the ideas which have been expressed by the colleagues who have spoken. My only regret is that we have not had an opportunity to hear on this matter of neutrality the authoritative voice of M. de La Pradelle.

It is not as an historian that I wish to approach this question of neutrality, I shall rather attempt a brief analysis.

With regard to neutrality, the nations at present belong to three different but superposed groups: first, the signatories of the Briand-Kellogg Pact, including nearly all the nations of the world, on the next



level, the Members of the League of Nations most of which are also signatories of the Briand-Kellogg Pact at the summit, those members of the League of Nations which have signed particular pacts i.e. regional pacts containing a clause stipulating mutual assistance.

What happens if hostilities break out in a given region? The members of the small group the participants in the pact of mutual assistance, have special duties and cannot be considered as neutrals.

On the next level are the Members of the League of Nations. I assume that the Council of the League, followed by each individual State, has officially recognised that Article 16 has been violated, and that sanctions must be applied against the aggressor.

There are then two categories of nations — those which, at the request of the League of Nations, furnish military aid — in this case there is no longer any question of neutrality — and those which, under the terms of Article 16 are considered as having suffered an act of war on the part of the aggressor but which, because of geographical considerations are perhaps not called upon to furnish military aid. They are, however bound to participate in what are called economic sanctions. I do not see neutrality here either.

But what becomes of neutrality in case the Council is not agreed regarding the aggression? Nine members say that one nation is the aggressor while a minority of five or six declares that the aggressor is a certain other nation. Does the idea of neutrality reappear in this case? I recall at this point the words of M. Ehrlich if Article 10 of the Covenant is in question, there can be no neutrality since there is a *personal* obligation to maintain the respect of the territorial integrity of a State. And if Article 10 is not in question, there is the underlying Briand-Kellogg Pact. The nations apart from rare exceptions are bound by both pacts, the Briand-Kellogg Pact being a general substratum containing a common obligation for all. We may say that even a nation which was neutral under the terms of Article 13 of the Covenant of the League would be bound by the obligations of the Briand-Kellogg Pact.

Let us now pass on to the situation of the members of the most universal group that which is composed of the States which have signed the Briand-Kellogg Pact. There is no question for them of an Article 10 or of an Article 16 nor of those positive obligations that have been formulated. But it has been pointed out that this pact is not only moral, but is a juridical pact, an international engagement in the technical sense of the word. Furthermore, if war should break out between two nations which had signed the optional clause of the Permanent Court of International Justice (even if they were not members of the League of Nations,) I believe that the nation attacked could go before the Court and have it take cognisance of the violation of the international engagement which is the Briand-Kellogg Pact.

I leave this theory and return to the practical viewpoint.



The Briand Kellogg Pact is a juridical pact which binds the nations to certain things. The least that can be said is that it forbids the States which have signed it, even those which have not been willing to give their consent to military measures, to aid the State which has violated the Pact and, consequently, to supply it with munitions.

The fact alone deals a severe blow to the old conception of neutrality. Similarly, it may be considered logical not to recognise a situation created by the aggression in violation of the law. This doctrine was first expressed by the United States, which, though it has signed the Briand-Kellogg Pact, is not a Member of the League of Nations.

There might be still other obligations. Could a nation forbid its national to enlist in the army of the nation which was victim of the aggression, or to enlist as volunteers in a corps of international police which might be created by the League of Nations? A nation which had signed the Briand Kellogg Pact could not legally oppose such enlistment. Its hands would be tied by its signature.

There remains the question whether it could and whether it ought to participate in economic sanctions.

This is a very grave problem, and I must say at once that I appreciate the view expressed by Mr. Jessup. I see in it a considerable progress beyond the old doctrine of neutrality. If the number of men as enlightened as Mr. Jessup were to increase in America, the theory of what we called "partial neutrality" might make such progress that all the pacts and all the signatories of the Briand-Kellogg Pact would end by speaking the same language, and we should then have made a tremendous advance in the domain of collective security.

On November 14, 1932, the French delegation to the Disarmament Conference — you will pardon this allusion to my own country — included, in its proposal of a plan for disarmament, a section entitled "Collective security," which makes the distinction which I mentioned a few minutes ago between three levels: signatories of regional pacts, Members of the League of Nations, signatories of the Briand-Kellogg Pact. If this proposal had been accepted, there would thus have been a common language, a basis for general agreement, since the Briand-Kellogg Pact has been signed by practically all the nations, even by those which have remained outside the League of Nations.

On the other hand, I am extremely dubious about what is called the "maintenance of impartial neutrality." This Conference, indeed, has brought us to a realisation of the progress which has been accomplished in the past fifteen years in the field of international law. The idea of neutrality, as our colleagues have conceived it, if it is not obsolete, is visibly transformed. Allow us to believe that it is "no longer the same thing" as M. Ehrlich put it, and that you have kept the word but have given it a different meaning. Allow us to give it another name and to recognise that the duties of the nations are not uniform. There is a necessary relativity. There can be no question, in organising



level, the Members of the League of Nations which are signatories of the Briand-Kellogg Pact of the League of Nations which regional pacts containing a clause

What happens if hostilities break out between members of the small group, the assistance, have special duties, and

On the next level are the Members. They assume that the Council of the League of Nations, has officially recognised that sanctions must be applied again

There are then two categories of the League of Nations, furnish no longer any question of neutral terms of Article 16 are considered the part of the aggressor but violations are perhaps not called upon however bound to participate in it. I do not see neutrality here either.

But what becomes of neutrality regarding the aggression? Not the aggressor while a minor aggressor is a certain other, reappear in this case? I recall that Article 10 of the Covenant is since there is a *personal* obligation of territorial integrity of a State. Are the underlying Briand Kellogg exceptions, are bound by both a general substratum contained may say that even a nation which Article 15 of the Covenant of the League of Nations of the Briand Kellogg

Let us now pass on to the universal group that which signed the Briand Kellogg Pact, an Article 10 or of an Article have been formulated. But not only moral, but is a jurisdiction in the technical sense of the law out between two nations in the Permanent Court of International Justice. Members of the League of Nations go before the Court and their international engagement is

I leave this theory and



PART III

FINAL REPORT

AND

SPEECHES DELIVERED AT THE  
CLOSING MEETING OF THE  
LONDON CONFERENCE

June 7, 1935.



collective security of placing all the nations on the same plane, in a world all of whose inhabitants would follow the same customs, both national and international and would all have exactly the same obligations. That is a chimera, and it is not desirable.

But it is a long step forward to have brought the former neutrals into the category of members of the Briand-Kellogg Pact. They will remain members of different societies, endowed with a hierarchy of different rights, but all united by the same common body of moral duties. If we have adopted one basis, if we know that there remains but one hierarchy of obligations we can trust the good faith and the interest of the nations to see to it that the old theory of neutrality loses its selfish aspects and keeps all its altruistic aspects.



PART III

FINAL REPORT

AND

SPEECHES DELIVERED AT THE  
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LONDON CONFERENCE

JULY 7, 1935.







REPORT BY THE GENERAL RAPPORTEUR  
ON THE CONFERENCE'S STUDY OF "COLLECTIVE SECURITY" (*translation*)

It was never any part of our plan to adopt a resolution summing up, in a more or less conventional fashion, the general opinion of our Conference

It is under the sign of scientific freedom that we met. It is in that spirit that we have carried on our discussions and that we now bring them to a close

The task which falls to me is certainly not made simpler by this fact. I cannot base my remarks on a text and limit myself to interpreting its meaning. Instead I must try, without losing sight of the diversity of our opinions, to bring out clearly the principal tendencies which have been manifested in the course of our deliberations

I shall try to do it with all possible objectivity. If I succeed only imperfectly, I trust that I may count upon your indulgence

Our first study meeting was devoted to the fundamental principles of collective security, to the examination of the idea itself and of its validity

In all ages, nations have tried to protect themselves against the risk of aggression from without. The need of security which they feel is in itself so natural that it can be admitted as a sort of postulate, the legitimate character of which has no need of proof

But how can this need be satisfied?

In the first place, and instinctively, it is in themselves, in the organisation and development of their own forces, that nations seek the reply to this question. The policy of armaments is not, indeed, the only manifestation of this tendency, but it constitutes the most striking form

Then, by an imperceptible evolution, this policy of armaments becomes more complex and finds a complement in the system of alliances. Two or three States are menaced, or consider themselves menaced, by the same danger. They join forces to meet it. There is already, in this practice, a certain degree of collaboration, but it is hardly to be distinguished, so far as concerns the spirit manifested, from the purely individualistic method. The policy of armaments and that of alliances issue, in fact, from the same conception and rest upon the same principle. First, because each of these policies pursues a limited object. They are not concerned with insuring general security, but simply with strengthening the position of one or several particular States. In the second place, because their method is the same. It consists solely in the establishment of a certain ratio of forces. It makes little difference whether it is a matter of the ratio between the forces of two States or between those of two groups of States. In the second



case as in the first, the system is erected against someone, even if it is really innocent of any aggressive purpose.

Such are the essential characteristics of what might be called the individualistic or particularistic solution of the problem of security.

The notion of collective security implies a totally different conception of the problem. Different, in the first place by reason of the aim involved. We are no longer concerned here with the individual security of a few States, but with the security of all. War is regarded as a common danger as a peril which, even when it is localised in its more direct manifestations affects the interests of the entire community. The organisation of collective security appears under the aspects of a defence of peace certain speakers (Profs. Leitmaier and Ehrlich) have even pointed out that it would perhaps be well to give it an even larger connotation, by opposing it not only to the danger of aggression from without but also to certain dangers which, under the form, for example, of an unjustified intervention in the affairs of a State, might menace the independence or the territorial integrity of the latter.

And if the aim is collective so is the method for here the problem is no longer to establish a given relation between the forces of a State and those of its hypothetical antagonist it is to institute an international collaboration in the broadest sense of the term. It is no doubt possible that, in this co-operative enterprise, the States may not all play the same part it is possible that they may contribute in different ways, and that, within the system regional arrangements may adapt their obligations to particular situations. But, in the long run, all these contributions must be integrated into a common enterprise.

Is this capable of realisation? And is it desirable?

Such are the questions which we have chiefly discussed.

Summing up the thesis which they had propounded in their memoranda and clarifying it in the light of further reflection, Prof. Coppola and M. Forges Davanzati have given striking expression to the reasons which lead them to consider the collective organisation of security as chimeric and consequently dangerous, — for every false idea is *ipso facto* dangerous.

Security in their view is a sentiment, a subjective fact of which it is impossible to give a general definition and which cannot be governed by an abstract system of rules and procedures. On the other hand, collective security would be lacking in effectiveness if it did not involve armed reaction against an aggressor. Military sanctions therefore occupy in it an essential place. But is it not then paradoxical to forbid nations to resort to war for the defence of their own interests that is, for the causes which affect them the most deeply and to make it on the contrary their duty to throw themselves into the struggle to ensure the respect of abstract rules which have no roots in their sentiments, their beliefs or their passions?



It is psychological realities that govern the world. If we build on another foundation, we are bound to go astray.

But if Prof. Coppola and M. Forges-D'Avanzati reject the idea of collective security, conceived as a universal and abstract system, they nevertheless consider that the defence of peace, on which civilisation depends, requires a concerted effort. This effort, however, does not seem to them to be humanly possible except in the presence of a common danger, and it is then the reality of this danger that provides the concerted action with its positive basis.

This important shading in their thought should be underlined, — all the more so since it reduces very considerably the gap which separates their thesis from that of the partisans of collective security.

On both sides, indeed, the necessity of an energetic struggle against war is admitted. On both sides it is likewise recognised that this struggle requires concerted effort and cannot be carried on successfully by purely individual means.

The bases of collective security have been explained by several speakers (Profs. Toynbee, Richardson, Cassin, Oudendijk, MacInnes, Djuvara, de Luna), whose arguments seem to have reflected the opinion of the majority of the Conference. These arguments might, I think, be summed up as follows:

(1) It is a fact that the individualistic system of security is bankrupt. It is perhaps a natural system, in the sense that nations are instinctively inclined to seek in it their safeguard. But experience proves that this safeguard is precarious. Not only have the policy of armaments and that of alliances shown themselves to be incapable of keeping peace, but they are likely, by a logical consequence of the principle underlying them, to become themselves potential causes of war.

Security, under this system, resides solely in a given relation of forces. And this relation is not a relation of equality. In the nature of things, it comes to be thought of as a relation of superiority. In fact, the only way in which a State or a group of States can be really protected is by crushing, in the adversary, all thought of aggression by the very superiority of the means which those States have at their disposal.

But who can be blind to the fact that this is to engage upon a dangerously precipitous path? For each party is naturally bound to try to obtain and keep this supremacy for himself, and that is the signal for a veritable race, a race which never comes to an end, or, more exactly, a race which is very likely to end in catastrophe, for a time comes when the tension is greater than the resistance of the peoples, and then the machine explodes.

If the collective formula of security lacks experience, the individualist formula has been tried only too long, and the memories which it calls up are recorded on the debit side of its account rather than on the credit side.



(2) The individualist method may perhaps formerly have corresponded more or less to its aim but that is no longer the case in our day. Important changes have taken place in international life, and their result has been to set the problem in new terms.

When we speak of war — of the war of other times and of the war of to-day — we use the same word to designate realities which are very different. The war of former ages could be considered as a method permitting the settlement of conflicts between States. It caused devastation, to be sure. But its creative force made up for its power of destruction. To-day the situation is quite different, and for two reasons: first because of the frightful means which science places at the disposal of the belligerents, secondly because of the worldwide entanglement of economic and social interests, which creates among all the nations an interdependence from which it is impossible for them to escape. No doubt we may still witness localised wars, producing only effects of little importance outside of the region in which they are fought. But, more and more, we run the risk of seeing the conflagration, when it breaks out, assume a different aspect and become, like the war of 1914, a sort of cataclysm, dislocating the machinery of the world and leaving behind it only a heap of ruins, on which all the nations, victors and vanquished, belligerents and neutrals, struggle against the same misery and the same anguish.

The danger has reached such proportions that it no longer affects merely the interests or even the existence of a single State, but civilisation as a whole. The task of combating it, can no longer be left to the specialists of one nation: all the States must unite their efforts not to defend an abstract system, but to protect themselves collectively against the danger which menaces them collectively.

(3) Collective security justifies itself moreover by more general considerations.

We have entered on a phase of history in which the requirements of international life are no longer consistent with insistence by the States on absolute sovereignty. This conception must inevitably disappear in one way or another. And there are but two possible alternatives: either local sovereignties will be destroyed by violence, or they will voluntarily adapt themselves to new needs by agreeing progressively through formal conventions to concessions at the price of which it will be possible for them to subsist as integrated elements in the international community.

Between these two methods it is scarcely possible to hesitate. But if we wish to apply the second, we must at the same time make an effort to organise security on a collective basis: for the collective organisation of security if we examine it carefully is merely the application, in a domain of the first importance, of that principle of collaboration which constitutes the essence of the method in question.

The idea of collective security is thus linked to that general conception



of international life which appears to be the most fruitful under the conditions at present existing in the world

Such are the reasons which, in the eyes of most of us, justify the notion of collective security

I said a moment ago that, after all, the ideas propounded by MM Coppola and Forges-Davanzati were perhaps not so far removed from these conclusions as they might appear at first sight

It is proper to note likewise that the partisans of collective security by no means ignore the measure of truth contained in the criticisms of their Italian colleagues. At bottom, what MM Coppola and Forges-Davanzati fear most of all, what they consider as a danger, is a system of collective security which would refuse to look at living realities and would exist only in the realm of legal abstractions

No one contests the accuracy of this opinion. That there is here a danger is certain, and there is no doubt that the attempts to organise peace which we have witnessed since 1919 have often been vitiated by a lack of realism, which, indeed, has been largely responsible for their failure

Perhaps the distance which separates the partisans of the two theses, and which has already shrunk, will be seen to be, in reality, even less considerable if we proclaim with one voice that it is impossible to seek to establish collective security otherwise than on the basis of facts, never forgetting that any political construction, if it is to be capable of survival, must be built upon the concrete phenomena of life

The second problem which has occupied our attention is that of the prevention of war<sup>1</sup>

The problem is very large and very complex, and we have by no means considered it in all its aspects. What we have chiefly discussed is the principle of the organisation of peaceful methods calculated to eliminate so far as possible the causes of war. We were led to concentrate on this subject, not only because of its great importance, but also because our preliminary studies had been especially turned in this direction

It is important to note, however, so as to avoid any misunderstanding, — and Prof Ehrlich has particularly insisted on this point —, that the problem of the prevention of war covers much more ground than that marked off by the bounds within which we have remained, broad though those bounds may be

In what does this problem consist? It is at the same time very easy to formulate and almost infinite in its potential ramifications

As collective security is a means of protection against war, the problem is to exorcise the evil before it can reach its paroxysm, that is to say, before violence can break loose. All that can be effected in this line lies within the realm of preventive action. The field is immense, and

<sup>1</sup> See above, Part II, Chapter III.



in it collective action may take on the most various forms. Between the moment when the first germs of conflict appear and that at which the tension of international relations becomes sufficiently acute to constitute a threat of war in the genuine sense of the word, the evil goes through an evolution. It passes successively through a series of phases, in the course of which a corresponding series of interventions may appropriately take place.

It would obviously have been desirable for us to stop to examine each of these but that was not possible. However without making a systematic examination of the question, the attention of the Conference was drawn to certain general considerations connected with it.

The first of these considerations is the important fact that, in the field of preventive action, the essential thing is to act as promptly as possible. The more rapid the intervention, the more chance it has of achieving the desired result with a minimum of effort. Just as a disease, taken at the outset, can be cured more easily and by means of a less severe treatment than if no action is taken until it has reached an acute stage, so it is easier and safer to settle international difficulties before they take on a critical character.

Lord Lytton, M. Cassin and M. Mantoux in particular brought out very clearly this important truth.

Referring to a closely related aspect of the question, the same speakers, together with our Chairman, Mr Malcolm Davis and Mr Harrison, dwelt on the great desirability of organising commissions of inquiry and of gathering information which would be available without delay in case it were needed, the time-factor being sometimes of decisive importance.

Attention should be directed also to the remarks of M. Cassin regarding the important services which would be rendered by the operation of a general convention for the limitation of armaments placed under the control of a permanent commission, with powers extensive enough to enable it to exercise a constant supervision of the execution of the promises made and thus to discover the very earliest symptoms of what might become, if it were neglected, a situation endangering the peace of the world.

Interesting though they may be the remarks which have just been recalled were formulated only incidentally in the course of our discussions, and as I said a moment ago it is primarily on the subject of the organisation of methods directed against the causes of war themselves that our interchange of views took place.

I think we are unanimous in recognising that no method, no mechanism can suffice for the attainment of this goal, unless it is employed in the interests of a wise prudent and comprehensive policy. The protection of peace and especially that part of the work, essential but extremely delicate which consists in combating war by attacking its causes requires above all a sense of reality and a sense of moderation.



It is with this idea in mind, — an idea certainly accepted by all the members of the Conference, but which it was perhaps worth while to formulate here —, that we began our discussion

Among peaceful methods, a basic distinction should be made between those which aim at the settlement of international disputes of a legal character, i.e., which have no other object than to ensure the correct application of the law already in force, and those whose function is to transform this law and make it more adaptable

In regard to the first class, there is a unanimous desire to see them developed. The question, it is true, has given rise to controversies, but it seemed to us preferable not to undertake to examine them, because it would have led us into a field of a markedly technical character, and because, in any event, from the political standpoint the great difficulty does not lie here

It lies rather in the very complex, very serious and very delicate problem of the transformation of existing law

But there it is necessary to make a new distinction, of which M. Ehrlich has pointed out the importance. When we speak of international law, or, more accurately, of the legal arrangements which govern international relations, we should realise that these arrangements have two quite different aspects. They include, on the one hand, certain norms, that is to say, objective, general and impersonal rules, and, on the other hand, subjective situations peculiar to certain States. Now the problem of peaceful transformation is far from having the same character in the two cases

The peaceful transformation of norms can generally be carried out without directly involving the vital interests of any given State, indeed, the procedures which the international order offers us already provide for this transformation in an adequate manner. It is true that there is no legislative organ in international society. But the adaptation of general rules to new needs can be carried out, and has long been carried out in internal societies, without resort to a legislative organ, by judicial action

The problem appears in quite another light when it is a question of adjusting or modifying subjective situations, peculiar to certain States and which, usually, are based on treaties. Here is the crucial point. No one ignores either its importance or the difficulties which it raises. To make possible these adjustments and these revisions, should special procedures be organised? And if so, what should they be?

As to the principle of such an organisation, it may be stated that a very widespread opinion has appeared within the Conference in favour of an affirmative reply. We have heard, for example, very interesting declarations in this sense by Lord Lytton, Profs. de La Pradelle, Gascony Marín, Castberg, Mittrany, Jessup, Zimmern, Berber, Leitmaier, Manning, Schwarzenberger, etc



The common conviction of the speakers just mentioned is that the legal structure in which at a given moment the political, economic and social situation of the world is expressed, must be capable of transforming itself both for the sake of putting an end to injustices and for the sake of adapting itself to new realities and that if the means of attaining this result peacefully do not exist, we rest inevitably exposed to the risk of a violent outbreak.

As to the application of the principle the opinions expressed differ and seem in some instances hesitant. Some recommend a broad application of Article 19 of the League of Nations Covenant, and the strengthening if necessary of the provisions of that article. Others like Prof. Jessup contemplate the creation of an organ analogous to the Mandates Commission. Others again indicate a preference for the institution of a Court of Equity or for the enlargement, under one form or another of arbitral procedure.

In reality this constructive aspect of the problem still remains undefined, and there is here, without doubt, a vast field which demands the careful attention of all those who are preoccupied by the problem of collective security.

But if the necessity of seeing to it that the *status quo* be made more elastic and that it be modified by peaceful means has been generally recognised in the course of our deliberations we should be giving an inadequate and consequently inaccurate picture of them if we limited ourselves to bringing out this tendency. Certain observations which have been made will serve to complete the picture and in a certain measure to correct it.

The most important of all these observations was formulated by Profs. Cassin and Djuvara, who obviously expressing the general opinion, called attention to the fundamental necessity of insuring the observance of international engagements. The most resolute partisans of methods of revision are in full agreement. The scrupulous fulfilment of international obligations seems to them to be the indispensable corollary of those methods. What they want, indeed, is to ensure the necessary evolution by regular methods, by the normal operation of institutions and the complete respect of the law.

Our survey has led us finally to the last region which we had to pass through that of the repression of war<sup>1</sup>. But here the points at which we paused were more numerous. Our interchange of views dealt successively with the problem of sanctions that of regional agreements that of the determination of the aggressor and that of neutrality.

The rather rapid study which we made of the problem of sanctions found an extremely solid basis in our written documentation, especially in the important memorandum of the Chatham House Group. The conclusions which are reached by this memorandum far from being

<sup>1</sup> See above Part II Chapter IV.



weakened by the discussion, found in it very definite confirmation. Several speakers, in fact, — notably M. Henri Hauser and Captain Liddell-Hart —, showed with a striking force of argumentation that the repression of war cannot ignore military sanctions. No doubt economic sanctions should not be neglected either. As Prof Webster pointed out, they may be useful in certain cases, and may at least effectively supplement military sanctions. But, if they must be retained, everyone agrees that they are not, by themselves, adequate in the most serious cases.

On this subject, M. de Luna presented a very pertinent observation, to which we can certainly subscribe unanimously, and which moreover applies to the whole organisation of peace. The important thing, he said, is not so much to define in a text the nature and the mechanism of sanctions, as to bring into being the will to apply them. Here, as always when one is dealing with a social institution, the kernel of the problem is psychological, and the technique of the law is impotent without the moral forces which give it life. M. Verzijl also dwelt on this profound truth, and illustrated it by a series of examples which should warn us against attempting rash constructions.

Military sanctions, backed up in case of need by economic sanctions, but themselves indispensable, if we wish to insure the repression of recourse to war — by logical steps we were thus led to consider the problem of regional pacts. For no one denies at present that the organisation of military constraint on a world-wide plan is practically impossible. In case of aggression, a certain reaction of the entire community may be expected, but this reaction cannot take the form, for all the States, of an armed intervention. It is only within a regional framework that repression of this type can practically be organised. To wish to extend the system beyond these limits would be to indulge in the error of abstract constructions, so justly denounced by M. Coppola, it would be to depart from that realism which should be the constant rule of true idealists.

Regional pacts appear then in fact as the means of setting up against the disturber of the peace the only sanction which can put a check to his schemes.

Their merits from this point of view are not disputed. M. Bertoni and Prof. McNair, notably, have dwelt on them, and Prof. Webster doubtless placed the problem in its proper setting when he remarked that the question was not whether or not there would be regional pacts, but whether these pacts would be bound up into a collective system.

That, in fact, is where the danger lies. It is not an imaginary danger, as M. Ferrari has demonstrated. Reciprocal engagements of mutual assistance, assumed by a few States, may, like an individual alliance, set up groups of Powers in opposition to one another and thus lead not to a strengthening of the collective work, but to its destruction.



What are exactly the precautions which can be taken to guard against this danger? Our discussion does not appear to have solved this problem completely. If it is agreed that regional pacts should find their basis and their limits in the collective system the technical means of ensuring the respect of this principle have barely been touched on. It is proper however, to call attention to the opinion of Mr. Escott Reid, according to which the functioning of a regional accord ought to be subordinated to the determination of the aggressor by an international organ that of Prof. Gey van Pittius for whom regionalism ought to be practised as far as possible in the form of continental arrangements and, finally the remark made by M. Ferrari that, in the Locarno Rhine pact system, justly recognised as a model to be followed, mutual assistance is provided for only at the expense of the States which belong to the institution and are at the same time its beneficiaries. A system of this kind certainly offers all the guarantees desirable, since it excludes the possibility of its being directed against a third Power. But can it always be achieved, and can it be said, that, in its absence, nothing should be done? It would doubtless be rash to settle the question so categorically. The question then remains open. We have approached it but we are far from having exhausted it.

Apart from the operation of regional pacts, it is difficult to conceive of the application of military constraint otherwise than by means of the creation of an international force. In point of fact, our discussions did not tarry over this point. It appears that, in the opinion of the majority of the members of the Conference, such an institution seems at present theoretical rather than practical. It may however, be recorded that it found a convinced defender in Mr. Capper Johnson.

Any system looking to the repression of recourse to war necessarily implies an initial operation, namely the determination of the aggressor.

Unless the aggressor is determined, in fact, it is impossible to bring into play the mechanism of sanctions, since the latter must be applied against that one of the belligerents who is considered guilty of having broken the peace.

As Lord Lytton has pointed out, it is important, before committing oneself on this question, to be quite clear as to its bearing the more so in view of the unfortunate confusion which reigns in some quarters on the subject.

Two questions arise, which are evidently closely connected, but which it is nevertheless necessary to distinguish.

The first is what are the acts of force which should be forbidden? In other words what are the acts which constitute aggression? The second is, how in case of hostilities, are the proper authorities to go about determining responsibilities and identifying the guilty party?

The first question must obviously be settled before the second is taken up for it is impossible to identify a criminal unless it is known beforehand in what the crime consists. But the solution found for this



first question is far from determining alone the reply which is to be made to the second. Thus, the definition of the aggressor which was incorporated in the Treaties of London of July, 1933, enumerates a list of acts which it considers as acts of aggression. In so doing, it merely makes more definite the rule forbidding resort to force. But the formula goes much farther. It establishes a mechanism which the designated authorities would be expected to apply, if the need should arise, for the purpose of fixing the responsibility. This mechanism is characterised by two essential features: first, it takes into consideration only acts of violence which shall have been actually committed, thus excluding everything which precedes the explosion of force, everything relative to provocation and to the preparation of the aggression, secondly, it sets up, among the five aggressive acts enumerated in the formula, a hierarchy based on the chronological order in which they are committed ("The State shall be considered the aggressor which will have been the *first* to commit one of the following acts").

It is obviously quite possible to accept the Soviet formula in so far as it clarifies and defines the prohibition of the resort to force, in so far as it determines the substance of the forbidden act, without accepting that part of it which sets up a system for fixing responsibilities. Here, in fact, the problem takes on quite a different aspect. The problem is to determine the aggressor and in consequence to set in motion against him the moral, legal, economic and military sanctions provided against the responsible author of a forbidden war.

Our discussion has had the merit of throwing a little light on this point and of making us realise the necessity — demonstrated notably by M. Cassin — of establishing a distinction between the prohibition of recourse to force and the determination of the conditions required for the setting in motion of the sanctions.

On the first point (prohibition of recourse to force), the majority of the opinions expressed were favourable to the Soviet formula. Profs. Deryng, MacPherson, Cassin and Dalton (the latter with a slight reservation) spoke in favour of it.

On the second point (means of establishing responsibility with a view to the application of sanctions), objections were expressed. Prof. Richardson, notably, drew our attention to the importance of the element of provocation and to the artificial character of a mechanism taking no account of all that preceded the use of force. Mr. Malcolm Davis also made observations of the same order. M. Mantoux stressed the importance of a factor neglected by the formula incorporated in the London treaties, namely the attitude of the States in conflict toward the recommendations which might be made to them by the international institutions, such as, for example, a recommendation to take measures for the halting of hostilities. The complexity of the problem was brought out particularly by Prof. Manning, who pointed out to us the



drawbacks involved in entrusting so delicate and so serious an operation to a rigid mechanism.

Finally it must not be forgotten that the determination of the aggressor raises one last question of the greatest practical importance — who is to make this determination? Is it to be left to each State to decide the question, at the risk of arriving at incoherent results? Or is this mission to be entrusted to an international authority? In the latter case, what is this authority to be, and under what voting regulations will it be authorised to take its decision? Is it possible to believe that in the present state of affairs, Governments will agree to acquiesce, in so important a matter in a majority decision, which might be contrary to their most important interests and to their most cherished convictions? To state these questions is enough to make us realise the extremely complicated nature of the problem and it must be admitted that we are far from seeing a solution of this problem which is at once practical and fully satisfactory.

Finally the last question which we have examined is that of neutrality or more exactly that of the idea of neutrality in a system providing for the repression of recourse to war. It is, in fact, from this special standpoint that the problem arises in its most acute form.

The repression of the recourse to war implies a certain collective reaction against the aggressor. This reaction may obviously take various forms, more or less accentuated, but in some form it is indispensable. If it be completely excluded, the regime of collective security is reduced to a group of preventive measures. Repression implies a reaction against the author of the illicit act and consequently discrimination between the belligerents. Is this discrimination consistent with the obligations of neutrality? And if so to what extent may it go? That is the question.

A very interesting discussion took place on this subject among several of our colleagues, including Profs. Schindler, Jessup, Lauterpacht, Mitrany, Ehrlich, Cassin and de Luna.

It is impossible in this report, drawn up at the end of our meeting to analyse the legal aspects, in some cases very subtle of the problem. It will perhaps be enough if I indicate, as I see them the general conclusions which the discussion reveals.

(1) The question whether neutrality is consistent with the repression of war obviously does not arise in practice except in case that repression is actually put into effect. Consequently if it is paralysed, if it is suspended for any reason — notably because it has been impossible to identify the aggressor — the rights and duties of neutrality are not in conflict with any international obligation.

(2) If the aggressor is identified and the collective reaction against him is set in motion the third parties participating in this reaction thereby abandon the impartiality which their status as neutrals imposes on them.



as that status was defined by the Hague Convention of 1907. It may even be said that they also abandon the duty of abstention which was likewise assigned to them by that Convention. But here their position varies according to the nature of the sanctions which they apply. Their intervention will be more or less far-reaching according to circumstances and the possibility can be imagined of its being reduced practically to nothing.

However that may be, if we give to the idea of neutrality the full and precise meaning which it had acquired before the World War, it is certain that this idea is not consistent with the repression of war.

(3) But the idea of neutrality has by no means always had the same content. It is only after a long evolution that it ended by crystallising in the rigid system represented by the 1907 Convention. If we look backward, we see that neutrality was formerly given a sense much more flexible, much more elastic, leaving to neutrals a much greater freedom of movement, and by no means hindering them from discriminating to a certain extent between belligerents.

This lesson of the past therefore justifies us, if the need arises, in relaxing the excessive strictness of our pre-war ideas and, without destroying the idea of neutrality, in giving it a meaning consistent, if not with all the forms of repression of war, at least with that minimum degree of partiality without which the collective reaction is inconceivable.

(4) What is this minimum? Our deliberations have not brought out a clear definition of it. But it appears that the following remark may be a useful indication of the direction in which such a definition is to be sought. At bottom, the States which hesitate to enter a system of collective security involving the repression of recourse to war, because they fear that, by so doing, they will lose the advantage of their neutrality, are dominated by the fear of being drawn into the war itself. Neutrality, in their eyes, means essentially the possibility of remaining far from the field of battle. Is it not then possible to devise for them a form of collaboration whose nature and characteristics would protect them against this risk? A distinction between measures which, directly or indirectly, imply participation in hostilities and those which can be taken without such participation, — here lies, perhaps, the road along which the solution of this problem may best be sought.

(5) Prof. Jessup has brought out another idea, which plays an important part in the Argentine Pact against war — that of utilising neutrality as one of the means of collective action.

This utilisation would not, of course, take place except in the absence of a determination of the aggressor. It is only in cases in which the crime remains uncertain that the concerted action of neutrals against war itself, with the aim of localising it and if possible starving it, might be useful and acceptable. The suggestions made by Prof. Jessup certainly merit our attention.



(6) Finally I cannot omit to recall the aspect of the problem which was particularly discussed by M. Schindler. Neutrality as M. Schindler reminded us, and as M. de La Pradelle had also mentioned in a speech which he made on another subject, has played and still plays in history a pacifying rôle. For certain countries, occupying special geographical situations the status of permanent neutrality may be considered as one of the best means at the disposal of politics for the maintenance of a pacific equilibrium. Such institutions are established not in the interests of the neutrals alone but in the general interest as well and it must be realised that the collective organisations of security far from encountering obstacles in these institutions, may on the contrary find support in the guarantees which they afford.

We have come to the end of our common task.

After reflecting each one for himself, on the subject proposed for our examination, we have, during the past week, in the most favourable surroundings, interchanged our views, compared our opinions, and also strengthened the ties which bind us together.

As we leave this Institute, this City this Country where we have been received in a way which is possible only where the very atmosphere is saturated with great traditions our feeling will not be free from regret. There will be a certain nostalgia in the memories which we carry away with us. But there will be also I am convinced, the satisfaction which comes from a task satisfactorily accomplished. For our effort has not been vain, and we have a right to rejoice in that fact.

The problem which we have been bold enough and prudent enough to grasp is one of those to which every thinking man ought to devote his attention. It has taken on, in this turbulent and shifting post war world, almost the aspect of an obsession. It casts its shadow on all the great international discussions and the League of Nations, since its formation, has met this problem at every turn of the road.

What quantities of ink it has caused to flow! How many words have been devoted to it! The plans, the facts, the books the speeches which have been dedicated to it have piled up until they no doubt constitute by their mass the dizziest sky-scraper of modern diplomacy.

We have nevertheless presumed to add our stone to the building and I believe, in all sincerity that we were justified in our presumption for our contribution is not to be confused with the others.

It is usually statesmen or jurists who are led to discuss the problem and to define their attitudes in regard to it. But no one can escape from the obligations imposed by his function. The statesman cannot forget that he has the interests of a nation to defend, and the struggle in which he is engaged is hardly propitious to calm judgment. As to the jurist, it is from the special viewpoint of legal technique that he is called upon to attack the problem.

Such is not the case with us. We are here only to express the tendencies of an enlightened public opinion. What characterises our



collaboration is that it brings together men not only of various nationalities, but of different professions, different beliefs and different parties, having no other common rule than their desire to contribute to a better organisation of international relations

It is worth while that the great questions which concern the life of all mankind should be examined from this point of view

No doubt an activity like ours does not produce immediately any concrete result. No convention, no protocol will issue directly from our labours. But in the realm of the imponderables, their effect may be salutary. Our deliberations have not only brought us closer together by making us understand one another better, they have left seeds which will develop, curiosities which we shall have to satisfy, doubts which we shall want to clear up, new conceptions which, little by little, will take definite form in our minds. We imagine that we have reached the end of our undertaking. In reality, that undertaking will go on in each one of us.

And it is perhaps here, in this future flowering, that the greatest benefit of our meeting resides, for there is nothing like the gradual ripening of ideas as a preparation for fruitful achievements.



## ADDRESS BY PROFESSOR GILBERT MURRAY

*President of the International Committee  
on Intellectual Co-operation*

I have been asked to make a few remarks in my quality of President of the Committee of Intellectual Co-operation. This Conference is in a sense an emanation from the Organisation for Intellectual Co-operation and I should like to say that we feel very proud of it. From time to time I have watched the expressive countenance of M. Bonnet, and I have seen a distinct expression of pride upon his face also.

Besides that I should like to express a very real sense of gratitude to those foreign experts who have taken the trouble to come to London to join in this Conference because I am quite sure that on the lines that M. Bourquin mentioned at the end of his paper this kind of Conference is of very great use indeed.

There are two other forms of intellectual co-operation going on. There is the practical work of statesmen, always subject to certain drawbacks. It has to be done on the spot and at a particular moment the statesmen have to consider what is possible. There is also what I think is an exceedingly powerful factor in the whole question, the somewhat unrealistic emotion of the peoples, which in this matter of peace is exceedingly strong. Between those two it is very desirable to have the problems of this great question of Collective Security thought out by experts. When I say experts I am very glad to recognise what M. Bourquin has said, that you have here some jurists, some philosophers, some historians people who approach the subject from different angles but who all have the trained mind that we associate with an expert.

May I give one or two impressions that I received from listening to the discussions. I did feel a certain regret that all this excellent debate was not going to lead to a perfectly definite conclusion but, of course, that would be utterly premature.

As I listened, it seemed to me that nevertheless there was a gradual moving of forces towards something like a conclusion. The general drift was in a direction. There was not much doubt or incoherence.

There was of course and there is throughout Europe an extraordinary difference in what I may call the philosophies, or to use the French word, *les mystiques* behind the beliefs of various nations and statesmen in the matter of public policy. There is an extraordinary variety. We have one example of it in that exceedingly able speech of Professor Coppola, where he defied us all and put forward ideals which were totally different from the ideals most of us were pursuing.

But that is not the only philosophy going in Europe which is very different both from ours and from one another. What is one to make of that? For one thing I think that people always differ in their philosophies more than their practice for a very simple reason, that you



never can put the philosophy actually to the test of experience, so that you cannot convince people.

Then another thing that struck me was that the two parties — I take not the other philosophies that are about but that of Signor Coppola and that of the majority of us — they make upon one another practically exactly the same criticisms

Signor Coppola says, our theory is unhistoric, we are not listening to history. We reply has he not noticed that the whole course of history has led up to the League of Nations? That of necessity we were drifting to that consummation?

He says that we are — of course, he was sure to say that — we are going against human nature, that human nature will not tolerate this sort of idealism. It has gone on for a long time. It went on right up to the year 1919 without a League of Nations, and therefore it cannot have a League of Nations!

We say that human nature is very unchangeable in certain respects, but that it can learn certain lessons

To which he says, "Yes, you think it can learn the lessons you like, but not the lessons I like."

Then he mentioned several times an argument which interested me a good deal, that a nation will fight, will go to the last extremity, for its honour or for its interest, but not for mere abstract considerations

On that I should like to say two things. First of all about the interest. We want the nations, if they ever do have to use sanctions, only to do it for their interests, but for their real interests, not their temporary or imaginary interests

Certainly for this country there is no interest so vital on purely practical grounds as the preservation of the general peace and the general security. If there is anything that would ever justify this country in fighting, it would be that vital interest, and certainly I can think of many other countries that would say the same. We want to make every sacrifice and every effort for Collective Security, because we believe that Collective Security is the most profound and far-reaching interest of civilisation.

But still more was I interested in the suggestions that we were following chimeras, things that did not exist, myths, and at the same time he reminded us in a very forcible way of the common view that a nation must fight for its national honour. Is not the national honour of a nation almost *par excellence* the typical myth, the typical unreality, for which people have fought?

There are two views of honour. In the old duelling days, supposing a man said I was a liar and a thief, the only way in which I could assert my honour was by killing him and by refusing to have any enquiry made as to whether I was a liar and a thief. That was the old way of guarding one's honour, and that on the whole is what national honour generally amounts to



The view of honour that we most of us take, is that if a man says I am a liar and a thief I insist on an enquiry and have it proved that I am not. Then I consider my honour is satisfied.

I think if a statesman came to me and said, 'I am now going to make a war. Not in my country's interest, no for the sake of its national honour' I should have the same impression as if he had said to me,

Excuse me for a moment. I have to sacrifice a child to Moloch " I should say If you like sacrificing children, that is a matter of taste. But there is no such person as Moloch. You ought to know that.

I am afraid I have not followed that beautiful objectivity which we admire so much in M. Bourquin. But I think there has been among us, even in philosophy a very general acceptance of a principle which I think is fundamental, and on which the League of Nations is built that is the conception of a society of nations that nations are really no longer so many separate anarchical sovereign independent States, but they do form a society. As soon as you form a society there are certain duties that are incumbent as a matter of course on members of the society. As one of the speakers said the other day if it is only a band of robbers, inside the band there is duty there is law. As soon as the society of nations is formed that law that morality must exist.

I think we are thrown back there on that very old conception of something like a social contract, according to Rousseau, to Hobbes, to Plato.

Plato says in his ironical way that according to many people's views, it is exceedingly agreeable and honourable to rob other people but it is most disagreeable and dishonourable to be robbed and on the whole the disagreeableness of being robbed is greater than the pleasure of robbing.

So that when we form a society we had better make — with due regret at giving up our freedom — a firm law against robbing each other at all. That principle sounds to some people desperately idealistic, but I am afraid that as soon as we have formed the society of nations, we shall be driven to the acceptance of it.

There was I think, also a general acceptance of a certain attitude towards practical questions. There was no longer any doubt, not even in that exceedingly interesting and able speech of M. Coppola there was not much attempt to deny that war has become in its modern form incompatible with civilisation.

I always think myself that that is not so much due to the terrific power of modern weapons of destruction, though that counts it is due very largely as M. Bourquin pointed out, to the great delicacy and intricacy of the interdependence of nations in modern society. It is also due to the extraordinary power that a modern Government has of reaching its hand into every corner and remote recess of its people and drawing out every source of strength for the war so that when the war is there it will not finish until utter exhaustion has come upon



a nation War will take everything : you cannot stop half-way I believe that is ultimately one of the great reasons why war is incompatible with civilisation

Also, of course, there is the mere fact that we are civilised Those of you who remember the experience of the last war will, I think, agree that one of the things that made it so unnatural, that made it seem as if the world had gone mad, was not the sufferings, either the sufferings that we went through ourselves or the sufferings that the people went through in the field, but the utter reversal of all wrong and right, the way that for those interminable four years we were turning evil into good, and good into evil I think that for that reason war in future is incompatible with the continuance of our civilisation

I was greatly interested in the criticisms, especially during the discussion on neutrality, that were passed on the actual system of Collective Security as it now exists, and I think the general conclusion was inevitable, that it is very faulty It is far from perfect, but nevertheless it is there and can be worked

Like nearly all human instruments it has its faults It probably will not work without regional pacts, and there are certain objections to regional pacts You have to make them very carefully or they will go wrong, and there are some parts of the world in which you cannot make them

This neutrality question is going to be difficult I had always imagined in my innocence that the Covenant of the League had abolished neutrality altogether I see that I have now to say that it has " either abolished it or transformed it, " which is not quite so clear

I see also, I think it is quite clear, that the time to stop a war is not after it has broken out, but long before it has broken out, and that our instrument of collective security in that matter for stopping it before it has begun, is still quite inchoate and incomplete

Lastly, of course, there is the great question referred to several times by M Bourquin, i.e. the whole problem of Peaceful Change you must stop war, you must get on without war, and yet you must not simply solidify the *status quo*

That problem of Peaceful Change is to be considered by the International Studies Conference at some future time The instrument is imperfect That is to say, we cannot possibly say that it will work automatically by itself if we leave it alone Very few instruments will I suppose on the whole we need not pay any particular attention to the police in London We know they are working and need not worry our minds about it But most human institutions do require a good deal of supervision from time to time, and this one certainly requires great vigilance and great vigour in the statesmen who are going to make it really effective But I do not think there is any reason for despair because the instrument which we have to work with is not all that it might be



I was sitting last night next to a Russian general, who said to me a very interesting thing. He mentioned that he had had a great deal of war. As a very young man he had fought in the war against Japan. Then he had been all through the Great War. Then through the Civil War. He said, Now I have had enough of war. I am a pacifist. But that was not the whole point. I then asked him 'And which was the worst of all those?' He said, Oh, the Civil War."

Any war that now comes among the civilised nations of Europe will be a Civil War. We are already one society. Not completely yet, but we are sufficiently one society to give any war that breaks out the quality which I think the last war had to a great extent, but which any other war in the future will have far more — the horror, the wickedness, the unnaturalness of a war between fellow-citizens.

ADDRESS BY MR. ALLEN W. DULLES,

*Chairman of the Conference's Study Meetings  
on Collective Security*

Mr. Dulles, after expressing the Conference's thanks to the British Co-ordinating Committee for International Studies for the hospitality which they had shown to the Members of the Conference, said — at the very beginning of our debates one of the speakers put the pertinent question, whether you could stop wars if there was profit in them. The answer is you cannot, but you can take the profit out of war through a collective system.

In the period between 1914 and 1917 there was no real machinery for collective action but circumstances created one. Here collective action took the profit out of war for those who took the last inevitable step to provoke it. If collective action was then possible when there was no provision for it, is there not a better chance that we can achieve it now after the progress, even though admittedly incomplete, of the past fifteen years? The great defect in the system of 1914 was that collective action was not anticipated and nations proceeded as though it would not occur. While it is clear that we have not yet built by any means a perfect collective system, while we cannot be sure that the system which exists will actually work in every instance, at least the peoples of the world are conscious that there is a collective system and that it may work, and that if it does work the law breaker who goes to war will pay the price.

In 1919 the attempt was made to build a new and elaborate machinery for peace almost over night. It is extraordinary that what was achieved was as sound as it has proved to be. In building the edifice, some of the foundations were not as firmly laid as they should have been and we may now have to go back and put in new props. A perfect edifice



cannot be built in a day As some of the speakers remarked, we are vitally in need of time within which to strengthen it. Let us hope that we will have that time and that we will use it to the best advantage

"It would be a great mistake to delay in building up the peace machinery because of apprehension about the attitude of the United States Firstly, because it would only do harm to give the idea of anxiety to induce us to move more quickly than American public opinion will permit and, secondly, because nothing will be more conducive to American co-operation than the idea that the work of consolidating peace is going forward calmly and consistently " Personally the speaker had little apprehension about the American attitude

Mr Dulles said this did not mean that he felt there was any likelihood of the United States joining the League of Nations or signing any agreements committing them to a future course of action other possibly than consultation He suggested that the United States was somewhat like the man in the Bible who said he would go a mile and went twain One can, however, rest assured that the United States is on the side of peace and will use its influence to promote peace

The real difficulty often lies, particularly in dealing with American public opinion, in presenting the facts of a given situation in a light which public opinion will recognise as fair and impartial and not coloured by particular national aspirations or desires It was because of this that he had joined Professor Ehrlich in suggesting the possibility of a fact-finding commission as possibly a useful addition to the present peace machinery He was encouraged to revert to that suggestion by the comments of several of the subsequent speakers, particularly Professor Cassin, Professor Mantoux and the remarks of Lord Lytton as to his own experience in Manchuria

In developing this idea, Mr Dulles suggested that a permanent standing non-political, non-national group be organised which would have the duty, on its own initiative, to investigate any situation which might threaten the peace Such investigation might follow upon the request of a particular Government or be made without such request The Commission should take advantage of speed, that weapon which was most formidable in the hands of those preparing war and turn that weapon of speed into an instrument of peace They should make their investigations immediately and should have authority, if they could not promptly reach the danger spot, of selecting *ad hoc* representatives to act for them and report to them The report should be immediately published and circulated to the States parties to the Briand-Kellogg Pact and to the Council of the League of Nations With that publication the duties of the Commission would cease and that of political organs would commence if further action was required Such a Commission could be supported by international contribution like the many international bodies such as the Hydrographic Bureau at Monaco If it is desirable to signal to the world the existence of mari-



time dangers is it not many times more important to signal potential dangers to peace?

To take the homely illustration of our local Fire Brigades, they go at a moment's notice. They may go to ten false alarms when there is only one fire they go as speedily to the false alarms as to real conflagrations. If a Commission, such as outlined, over the period of a century succeeded in postponing or preventing a single outbreak of hostilities it would have paid for itself many times over.

The speaker made it clear that this Commission was in no sense to take the place of, or compete with any of the existing organisations under the Covenant of the League or treaties. It was merely to add to the machinery there provided the element of speed and of non political investigations and report. The speaker recognised that this suggestion was only what one might call one of the minor props to the peace structure but it was possible by building up props of that nature, organisations which might invite even wider participation than any now existing that the peace machinery could be strengthened.

Mr Dulles said that he had come to the meetings with a certain amount of scepticism due, he felt, to the futility of most debates at previous international conferences which he had attended. He also had the natural apprehension that his task would consist chiefly in depriving his colleagues of that most cherished part of their speeches, the peroration. As a lawyer interested in continuing to practice internationally he did not relish the thought of having to impose such measures on the eminent authorities in the field of international law represented at the Conference. He was, however no longer sceptical as to the utility of the meetings. The Delegates had all responded to the suggestion that there should not be an exchange of speeches but an exchange of constructive ideas.

In conclusion Mr Dulles referred to the subject which had been chosen for the coming Meeting namely "Peaceful Solution of Certain International Problems (or what is now called "Peaceful Change")". In dealing with the subject of Collective Security the work of the Studies Conference had been rendered complex because they were in some ways behind or following the various Governments and Foreign Offices of the world which had been examining this subject from every aspect for a period of years. Practically no paths remained unexplored either by these Governments or by instrumentalities of the League. However in taking the subject of "Peaceful Change" for the Conference two years hence the members had decided to break new ground. Here they were leading and not following any governmental initiative and he felt that if this subject were faced with the same frankness and courage which had been shown in dealing with Collective Security the coming Conference would add a real and lasting contribution to world thought and possibly to world action.



ADDRESS BY LORD MESTON,  
*President of the Conference*

*The President, LORD MESTON, after thanking the General Rapporteur, Professor BOURQUIN, and the Chairman of the Study Meetings, Mr DULLES, for the work which they had done for the Conference, spoke as follows*

“ All those of you, Ladies and Gentlemen, who have participated in the business of the last five days, will agree that we have had a very memorable meeting. It has been memorable both for the substance of its work and for the spirit in which that work has been approached. There have been occasional spurts of cynicism and scepticism. There has been sometimes a slightly contemptuous inflection on the question whether the practical results of our work correspond altogether with the eloquence of our theories. But all this has been happily and amiably absorbed in the general feeling of the intrinsic value of what has been done.

“ In that feeling we have, it seems to me, a recognition of the use of the philosophic approach to all great problems right from the beginning of civilisation. I am speaking not as an historian but as a simple student. I honestly believe that right from the beginning of civilisation, it has been the philosopher who has ultimately shaped men's minds, and thus in the end profoundly influenced men's actions.

“ If then in a very small measure our discussions can enter into the category of philosophic material, they will not have been in vain. As was said very truly by Professor Webster this morning, we of this generation are watching the birth of a new international society. On the younger members of our generation there will rest the task of nursing and strengthening this new birth. Each of us can only live his little day and play his little part. If our part, whether it be small or whether it be large, brings us into the ranks of those who laboured to that end, who gave their energies, their brains, their minds to the service of this new society, to this revised conception of human relations, then we may feel some humble satisfaction that we have not altogether failed in our duty ”







## APPENDICES

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# LIST OF MEMORANDA ON COLLECTIVE SECURITY

submitted to the

PARIS CONFERENCE (1934)

and to the

LONDON CONFERENCE (1935)

## AUSTRIA (*Konsularakademie, Vienna*)

- 1 PLAN FOR THE ORGANISATION OF PEACE — OBSERVATIONS ON THE FRENCH PROPOSALS OF NOVEMBER 14, 1932, by ALFRED VON VERDROSS

(Extract from an article published in the review *Völkerbund* of the *Deutsche Liga für Völkerbund*, February 3, 1933)

*See extracts pp 189-190*

This memorandum was published in *Coopération intellectuelle*, Nos 40-41, pp 218-222 (Publication of the International Institute of Intellectual Co-operation, 2, rue de Montpensier, Paris, 1er)

- 2 AUSTRIAN OPINION ON "COLLECTIVE SECURITY," by CARL BROCKHAUSEN, CONSTANTIN VON DUMBA, MAX FREIHERR HUSSAREK VON HEINLEIN, GOTTFRIED KUNWALD, RICHARD REISCH, ALOIS PRINCE SCHONBURG-HARTENSTEIN, RITTER VON SRBIK, ERNST RITTER VON STREERUWITZ AND GUSTAV WALKER

*See Note pp 126-127*

- 3 LEGAL DISPUTES AND CONFLICTS OF INTERESTS, by STEPHAN VEROSTA

*See extracts pp 190-192*

## CANADA (*Canadian Institute of International Affairs, Toronto*)

- 1 CANADIAN OPINION ON "COLLECTIVE SECURITY"

### PART I

#### THE GENERAL QUESTION OF COLLECTIVE SECURITY

- (a) The Organization of Peace, by H F ANGUS
- (b) A Policy of Peace, by W L MACKENZIE KING
- (c) Canada and the League, by ARTHUR MEIGHEN
- (d) Canadian Foreign Policy in the 1930's, by F H UNDERHILL
- (e) The Price of Peace, by J S WOODSWORTH

*See extracts pp 49-52, 131-132*

### PART II

#### SPECIAL ASPECTS OF THE PROBLEM OF COLLECTIVE SECURITY

- (a) Note on Moral Disarmament, by W H FYFE  
*See extracts pp 286-287*
- (b) Military Effectiveness of Economic Sanctions, by R A MACKAY  
*See extracts pp 339-340*
- (c) Key Minerals and the Preservation of Peace, by R C WALLACE  
*See extracts pp 340-345*
- (d) Canadian Opinion To-day and a Peace Policy, by T W L MACDERMOT  
*See extracts pp 52-54*



## APPENDIX

DOCUMENTS RELATING TO THE POLICY OF THE CANADIAN GOVERNMENT  
IN RESPECT OF THE COLLECTIVE SYSTEM2. CANADIAN OPINION ON COLLECTIVE SECURITY *by* J. W. DARTON AND ESCOTT  
REID(a) A Foreign Policy for Canada, *by* J. W. DARTON.(b) An Anglo-Saxon Interpretation of Collective Security *by* ESCOTT REID.3. COLLECTIVE SECURITY BY STUDY GROUPS OF THE CANADIAN INSTITUTE OF  
INTERNATIONAL AFFAIRS. Report *by* ALAN B. PLAUNT*See extracts pp 54-66 132 134, 19 195 293 296*CZECHOSLOVAKIA (*School of Political Science Prague*).1934 SOME PRELIMINARY OBSERVATIONS CONCERNING THE QUESTION OF COLLECTIVE  
SECURITY FROM THE SOCIOLOGICAL POINT OF VIEW*This memorandum was published in Coopération Intellectuelle Nos. 40-41  
pp 274 276 (Publication of the International Institute of Intellectual  
Co-operation, 2, rue de Montpensier Paris, 1er)*1935 1. TREATIES IN FORCE ON THE PROBLEM OF COLLECTIVE SECURITY *by* MICHEL  
ZIMMERMANN*See extracts pp 343 346.*2. THE LITTLE ENTENTE AND COLLECTIVE SECURITY *by* MICHEL ZIMMERMANN*See extracts pp 346-348*DENMARK (*Institute of History and Economics Copenhagen*)1934. OBSERVATIONS CONCERNING THE STUDY PROGRAMME FOR THE QUESTION OF  
COLLECTIVE SECURITY *by* GEORG COHN.*This memorandum was published in Coopération Intellectuelle Nos. 40-41  
pp 222 228 (Publication of the International Institute of Intellectual  
Co-operation, 2 rue de Montpensier Paris, 1er)*1935 1. THE SYSTEM OF SANCTIONS DEVISED BY ARTICLE 16 OF THE COVENANT AND  
THE FUTURE OF NEUTRALITY *by* GEORG COHN.*See extracts pp 422 424*2. THE CAUSES OF WAR AND MORAL DISARMAMENT *by* GEORG COHN*See extracts pp 28 292*FRANCE (*Commission Française de Co-ordination des Hautes Etudes Internationales Paris*)1934 GENERAL VIEWS ON THE QUESTION OF COLLECTIVE SECURITY *by* LOUIS LE FÈVRE  
AND DE GEORGE DE LA PRADELLE*This memorandum was published in Coopération Intellectuelle Nos. 40-41  
pp 239-256 (Publication of the International Institute of Intellectual  
Co-operation 2 rue de Montpensier Paris, 1er)*



- 1935 1 THE REVISION OF TREATIES, *by* LOUIS LE FUR AND DE GEOUFFRE DE LA PRADELLE  
*See extracts pp* 195-200
- 2 FINANCIAL AND ECONOMIC ASSISTANCE AND SANCTIONS IN CASE OF INTERNATIONAL CONFLICTS, *by* JEAN NAUDIN  
*See extracts pp* 348-352
- 3 LEGAL AND POLITICAL ASPECTS IN THE ORGANIZATION OF INTERNATIONAL JUSTICE, *by* GERMAIN WATRIN  
 (Published in the *Revue de Droit international*, July-August-September, 1934)  
*See extracts pp* 201-205
- 4 DEFINITION OF THE AGGRESSOR, *by* A CAMILLE JORDAN  
 (Published in the *Revue de Droit international*, July-August-September, 1934)  
*See extracts pp* 296-304
- 5 EVOLUTION OF NEUTRALITY, *by* PAUL DE LA PRADELLE  
 (Published in the *Revue de Droit international*, July-August-September, 1934)  
*See extracts pp* 404-412
- 6 THE PREVENTIVE ORGANIZATION OF SECURITY THROUGH THE SANCTION OF THE ARMAMENTS CONVENTION, *by* R GUILLIEN  
 (Published in the *Revue de Droit international*, July-August-September, 1934)  
*See extracts p* 284
- 7 FRENCH OPINION AND THE PROBLEM OF COLLECTIVE SECURITY, *by* GEORGES SCELLE AND RENÉ CASSIN  
*See extracts pp* 66-79

GREAT BRITAIN (*British Co-ordinating Committee for International Studies, London*)

1 SANCTIONS

PART I

*by* E JONES PARRY and S T BINDOFF  
 Historical Section, 1815-1914

PART II

*by* a Study Group of Members of the Royal  
 Institute of International Affairs

*Chapter I* Introduction — *Chapter II* Sanctions in general — *Chapter III* Diplomatic Sanctions — *Chapter IV* Financial Sanctions — *Chapter V* The Embargo on War Materials — *Chapter VI* The Embargo on Raw Materials necessary to the Manufacture of Arms and Munitions — *Chapter VII* The International Boycott — *Chapter VIII* Military Sanctions

*See extracts pp* 358-373

- 2 BRITISH OPINION ON COLLECTIVE SECURITY, *by* THE BRITISH CO-ORDINATING COMMITTEE FOR INTERNATIONAL STUDIES

*See extracts pp* 79-91



### 3 SOME BRITISH VIEWS ON COLLECTIVE SECURITY INTRODUCTION *by* LORD MESTON

#### PART I

- (a) *The Elements of Collective Security by C. A. W. MANNING*  
*See extracts pp 134 136 206-208*
- (b) *The Collective Peace System and British Policy by W. ARNOLD FORSTER*  
*See extracts pp 91-96 208-209 303 309 353 354*
- (c) *Obstacles to Collective Security by G. M. GATHORNE HARDY*  
*See extracts pp 136-140 354 355*
- (d) *The Prevention of War by H. R. G. GREAVES.*  
*See extracts pp 140-144.*

#### PART II

- (a) *The Notion of Neutrality in a System providing for the Repression of Recourse to War by H. LAUTERPACHT*  
*See extracts pp 412 419.*
- (b) *Sanctions as a Factor in Collective Security by ARNOLD D. MCNAIR*  
*See extracts pp 357 358*
- (c) *The Problem of Peaceful Change and Article 19 of the Covenant, by DAVID MITRANT*  
*See extracts pp 209-215*
- (d) *Regional Security and the World Collective System, by H. V. HODSON*  
*See extracts pp 355 357*
- (e) *An International Air Police Force and Collective Security by VIVIAN ADAMS.*

### ITALY (*Centro Italiano di Alti Studi Internazionali Roma*)

#### 1934 1935 GENERAL PRINCIPLES OF COLLECTIVE SECURITY *by* FRANCESCO COPPOLA.

This memorandum was published in *Coopération Intellectuelle* Nos. 40-41 pp 256-260 (Publication of the International Institute of Intellectual Co-operation, 2, rue de Montpensier Paris 1er)

- 1 *THE IDEA OF COLLECTIVE SECURITY by FRANCESCO COPPOLA*  
*See extracts pp 144 148*
- 2 *COLLECTIVE SECURITY AND REALITY by ROBERTO FORGES-D'AVANZATEL*  
*See extracts pp 148 150.*
- 3 *HISTORICAL AND LEGAL CONSIDERATIONS ON UNSUCCESSFUL PAST ATTEMPTS TOWARDS COLLECTIVE SECURITY by GIANNINO FERRARI DALLE SPADÉ*
- 4 *SOME LEGAL ASPECTS OF THE PROBLEM OF COLLECTIVE SECURITY by SCIPIONE GIAMMA.*  
*See extracts pp 215 216*



NETHERLANDS (*Netherlands Committee for the Co-ordination of International Studies, Rotterdam*)

COLLECTIVE SECURITY, *by* J LIMBURG and H J W VERZIJL

*See extracts pp 216-218, 312-313*

This memorandum was published in *Coopération Intellectuelle*, Nos 40-41, pp 260-265 (Publication of the International Institute of Intellectual Co-operation, 2, rue de Montpensier, Paris, Ier)

## NORWAY

MEMORANDUM ON COLLECTIVE SECURITY, *by* A RAESTAD

*See extracts p 150-152*

POLAND (*Central Committee of Polish Institutions of Political Science, Warsaw*)

1934 SOME OBSERVATIONS CONCERNING THE STUDY PROGRAMME FOR THE QUESTION OF COLLECTIVE SECURITY, *by* ZYGMUNT CYBICHOWSKI

This memorandum was published in *Coopération Intellectuelle*, Nos 40-41, pp 265-269 (Publication of the International Institute of Intellectual Co-operation, 2, rue de Montpensier, Paris, Ier)

1935 1 THE DEVELOPMENT OF INTERNATIONAL LAW AND THE PROBLEM OF COLLECTIVE SECURITY, *by* LUDWIK EHRLICH

*See extracts pp 152-158*

2 RESPECT OF INTERNATIONAL OBLIGATIONS REVISION OF TREATIES AND INTERNATIONAL SITUATIONS, *by* LUDWIK EHRLICH.

*See extracts pp 218-224.*

3 THE PROBLEM OF LEGAL DISPUTES AND CONFLICTS OF INTERESTS, *by* LUDWIK EHRLICH

*See extracts pp 225-228*

4 NON-AGGRESSION PACTS AND THE COVENANT OF THE LEAGUE OF NATIONS, *by* ANTONI DERYNG

*See extracts pp 373-380*

5 THE PROBLEM OF CONTROL AND THE WORK OF THE DISARMAMENT CONFERENCE *by* STANISLAW E NAHLIK

*See extracts p 285*

6 PEACEFUL METHODS OF SETTLEMENT OF INTERNATIONAL LEGAL CONFLICTS, *by* JULIEN MAKOWSKI

*See extracts pp 229-231*

7 THE INTERNATIONALISATION OF CIVIL AVIATION, CONSIDERED FROM THE STANDPOINT OF COLLECTIVE SECURITY, *by* KAZIMIERZ GRZYBOWSKI

*See extracts p 285*



8 DEFINITION OF THE AGGRESSOR, *by* WACŁAW KOSIARŃSKI.

*See extracts pp 313 317*

The memoranda enumerated above under Nos. 1 to 8 were reproduced in the publication entitled "La Sécurité Collective. — Mémoires présentés par le Comité Central des Institutions polonaises des Sciences politiques, à la VIII<sup>e</sup> Conférence des Hautes Études Internationales à Londres, 3-8 juin 1935." Library of Constitutional and International Law French series, vol. II. Jean-Casimir University Lwów Poland, 1935

RUMANIA (*Romanian Social Institute Bucharest*)

## 1934. THE GENERAL PRINCIPLES OF COLLECTIVE SECURITY

This memorandum was published in *Coopération Intellectuelle* Nos. 40-41 pp 269-271 (Publication of the International Institute of Intellectual Co-operation, 2, rue de Montpensier Paris, 1er)

1935 1 RUMANIA AND COLLECTIVE SECURITY *by* G. VLADESCO-RACOASA.

*See extracts pp 97 100*

2. THE MEANS OF ENSURING THE PROGRESS OF LAW AND THE RESPECT OF JUSTICE OUTSIDE OF WAR, *by* M. G. SOFRONIE.

*See extracts pp 231 234*

3. PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES, *by* C. VULCAN

*See extracts pp 234 237*

4. REVISION OF TREATIES AND INTERNATIONAL SITUATIONS, *by* MICHEL ANTUNESCO.

*See extracts pp 237 240*

5. THE DETERMINATION OF THE AGGRESSOR, *by* VESPAÏEN V. PELLA

*See extracts pp 317 319*

6. MUTUAL ASSISTANCE, SANCTIONS AND REGIONAL AGREEMENTS *by* R. MEITANU.

*See extracts pp 320-322*

SPAIN (*Federación de Asociaciones Españolas de Estudios Internacionales Madrid*)1. PEACEFUL SOLUTION OF INTERNATIONAL CONFLICTS, *by* JOSÉ GARCÓN Y MARIN AND PEDRO CORTINA MAURI

*See extracts pp 241 244*

2. RESPECT OF INTERNATIONAL OBLIGATIONS. REVISION OF TREATIES AND INTERNATIONAL SITUATIONS, *by* GASPARD BATON Y CHACÓN

*See extracts pp 245 252*

This memorandum was published in *Coopération Intellectuelle* Nos 40-41 pp 223 238 (Publication of the International Institute of Intellectual Co-operation, 2 rue de Montpensier Paris 1er).

3. THE NATURE OF COLLECTIVE SECURITY *by* GERHART NISPHYER

*See extracts pp 158 160*



## SWITZERLAND

THE NOTION OF NEUTRALITY IN A SYSTEM INCLUDING REPRESSION OF RESORT TO WAR, *by* DIETRICH SCHINDLER

*See extracts pp* 419-422

UNITED STATES OF AMERICA (*Council on Foreign Relations, New York*)

INTERNATIONAL SECURITY, *by* PHILIP C JESSUP<sup>1</sup>

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## GENEVA SCHOOL OF INTERNATIONAL STUDIES

- 1 MEMORANDUM ON COLLECTIVE SECURITY, *by* J H RICHARDSON

*See extracts pp* 252-253, 319-320

- 2 AN HISTORICAL NOTE ON COLLECTIVE SECURITY, *by* SIR ALFRED ZIMMERN

*See extracts pp* 320-324

<sup>1</sup> "International Security," *by* PHILIP C JESSUP Published by the Council on Foreign Relations, New York, 1935 Price \$1.50 post free



## NEW COMMONWEALTH INSTITUTE, LONDON

We regret that it has proved impossible to reprint the extremely interesting memoranda presented by the New Commonwealth Institute. The limited dimensions of the present volume precluded us from reprinting them in full and the nature of these studies consisting of a series of monographs did not lend itself to the method of printing extracts as in the case of most of the other memoranda presented to the Conference.

For these reasons we print below a detailed list of these publications with a brief indication of their contents. By the kindness of the New Commonwealth Institute our readers can obtain free copies until the edition is exhausted by applying to the New Commonwealth Institute, Thorney House, Smith Square, London, S.W. 1.

## 1 THE LEGAL PROCESS AND INTERNATIONAL ORDER, by HANS KELSEN

## CONTENTS

War a Problem of Social Technology — Reduction of Armaments and the Elimination of War — The Juridical Order of Inter-State Relationships. — Law and Compulsion. — Reprisals and the Theory of the Just War. — The Primitive Character of Present International Law — The Analogous Development of Municipal and International Law — The Problem of Peaceful Change. — Problems of International Judicial Organisation. — The Relations between Disarmament International Justice and Security — An International Emergency Law — Disputes between States and Individuals. — Auxiliary Organisms of an International Court. — Separation of Functions to Prevent and Settle International Disputes.

This memorandum was published in "The New Commonwealth Institute Monographs," Series A, No. 1 London, Constable, 1933

## 2 THEORY OF THE INTERNATIONAL GOVERNMENT by GEORGES SCHLE

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- I Statement of the question. Is an International Government possible? Governmental functions.
- II. Application of legal Principles. — (1) Guarantee of legal relations between individual members of the international community (2) The Technical Organisations of the League of Nations (3) Inadequacy of Diplomatic Protection (4) Guarantee of International Jurisdictions. System of Minorities. Mandates. Governmental Jurisdictions and Article X of the Covenant.
- III. Governmental Processes. — (1) Control (2) Intervention. Its limits (3) Intervention of the League of Nations. Necessary Reforms (4) The Prevention of Conflicts. Interpretation of the powers of the League Council, Articles XI and XV.
- IV. The executive function or disposition of force. — (1) War under classic law and neutrality (2) The League of Nations and the distinction between Police and War. Evolution. the Geneva Protocol. Locarno. Pact of Paris (3) Multiplication of Pacts of Security and Definition of the Aggressor.
- V. Conclusion. — Disarmament and an International Police Force.

This memorandum will be published in "The New Commonwealth Institute Monographs" Series B No. 2 London, Constable 1936

3 THE POWER OF THE INTERNATIONAL JUDGE TO GIVE A DECISION *ex aequo et bono* by MAX HADICHT

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- I The power of the Permanent Court of International Justice to decide *ex aequo et bono*



- 1 The ordinary Decision and the Extraordinary Decision of the Court  
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- 3 The Criterion between Conflicts as to a Right and other Disputes. Definition of Conflicts as to a Right — The Meaning of the *ex aequo et bono* Procedure — The Powers of the *amiable compositeur* of the Belgo-Spanish Treaty of July 19th, 1927 — Is Recourse to the *ex aequo et bono* Procedure possible against the Will of one of the Parties?
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- 4 This memorandum, which was to have been prepared by Professor SCHÜCKING, was not submitted owing to the illness of the author

- 5 WILLIAM LADD AN EXAMINATION OF AN AMERICAN PROPOSAL FOR AN INTERNATIONAL EQUITY TRIBUNAL, by GEORG SCHWARZENBERGER

#### Introduction

Preface by JAMES BROWN SCOTT, Professor of International Law at Georgetown University, Washington

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Ladd's Place in History — The General Obstacles to the Development of International Law — The Particular Difficulties of the Scientific — Approach

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Lacroix The Need for Separating the Roles of Judge and Party — The Superiority of Ladd's Scheme The Possibility of Changing the *status quo* — The Ultimate Requisite The Conformity between Idea and Reality — The Prospects in Our Time.

### III. Ladd's Influence upon later Efforts to organize Peace.

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This memorandum will be published in "The New Commonwealth International Magazine" Series B No. 1 London, Contable 1916



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in the University of Oxford

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This memorandum was published in "The New Commonwealth Institut Monographs" Series II No. 5 (London, Constable 1935)







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This memorandum was published in "The New Commonwealth Monthly" July 1934.

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This memorandum was published in "The New Commonwealth Institute Monographs," Series C, No. 2 London, Constable, 1935

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This memorandum was published in "The New Commonwealth Monthly," November 1934



# SEVENTH INTERNATIONAL STUDIES CONFERENCE

Paris, May 24-26 1934

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# EIGHTH INTERNATIONAL STUDIES CONFERENCE

London, June 3 8 1935

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